APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT DATED AND FILED APRIL 1, 1999

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-20905

CHRIS PARADISSIOTIS,

Plaintiff-Appellant,

v.

ROBERT E. RUBIN,
SECRETARY OF THE UNITED STATES
DEPARTMENT OF TREASURY; ET AL,

Defendants,

ROBERT E. RUBIN,
SECRETARY OF THE UNITED STATES
DEPARTMENT OF TREASURY;
R. RICHARD NEWCOMB,
DIRECTOR OF THE OFFICE OF
FOREIGN ASSETS CONTROL,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Texas

Appendix A

Before JOLLY and JONES, Circuit Judges, and LAKE,* District Judge.

EDITH H. JONES, Circuit Judge:

This case involves enforcement of the Libyan Sanction Regulations, 31 C.F.R. §§ 550.101-.803 as they relate to the assets of Chris Paradissiotis, a citizen of Cyprus. Arguing that the Treasury Department's Office of Foreign Assets Control ("OFAC") misapplied the regulations and violated the Constitution, Paradissiotis sought declaratory, injunctive, and monetary relief in the district court. We agree with the district court's essential conclusions that Paradissiotis was validly labeled as a Specially Designated National of the Government of Libya and that his attempt to engage in transactions with property in the United States was validly regulated by the sanctions.

I. FACTUAL AND PROCEDURAL HISTORY

In order to punish Libyan support for international terrorism, President Ronald Reagan issued, under the authority of the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06, Executive Orders 12543 and 12544 banning commerce with Libya and freezing all United States property interests of the Libyan Government and its agents. *See* 51 Fed. Reg. 875, 1235 (1986). Pursuant to the orders, the Secretary of Treasury promulgated the Libyan Sanction Regulations, which later Presidents have renewed.

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* District Judge for the Southern District of Texas, sitting by designation.

Appendix A

Through OFAC, the Treasury Secretary oversees the enforcement of the sanction regulations and the licensing procedure which permits covered individuals or entities to avoid the application of the sanctions to a particular transaction.

In 1991, OFAC labeled Paradissiotis a Specially Designated National of Libya pursuant to 31 C.F.R. § 550.304(c). *See* 56 Fed. Reg. 37156 (1991). This designation was based on his service as president and member on the Boards of Directors of Holborn Investment Company Limited ("HICL") and Holborn European Marketing Company Limited ("HEMCL"). Both HICL and HEMCL are subsidiaries of Oilinvest (Netherlands) B.V., which, in turn, is a wholly owned subsidiary of Oilinvest International, N.V., a Libyan state-controlled holding company. By virtue of his connection to these and other Libyan-related entities and, therefore, his direct or indirect actions taken on behalf of Libya, OFAC found that Paradissiotis constituted the Government of Libya ("GOL") for purposes of the sanctions regulations. *See* 31 C.F.R. § 550.304(c). As a specially designated national, Paradissiotis's United States assets were frozen.

From January 1993 through December 1996, Paradissiotis applied repeatedly to OFAC for a license under 31 C.F.R. § 501.801(b)(2) so that he could sell stock and exercise stock options in the Coastal Corporation ("Coastal") and receive the proceeds. Paradissiotis had received this property as President of HOTL, a downstream and offshore subsidiary of Coastal, a Delaware corporation, before the Libyan sanctions went into effect. OFAC

permitted Paradissiotis to retain counsel in this country but denied his requests to conduct any other prohibited transaction.

Paradissiotis then filed suit seeking declaratory, injunctive, and monetary relief for being categorized as a Specially Designated National under the regulations. The district court denied Paradissiotis's request for a preliminary injunction and granted the government's motion for summary judgment. Paradissiotis timely appealed.

II. ANALYSIS

Paradissiotis challenges the scope of the Libyan Sanctions Regulations, their applicability to his conduct, and OFAC's denials of his license requests.[1] Paradissiotis contends that OFAC's interpretation of the regulations was incorrect and exceeded the scope of the authorizing statute and Executive Orders and violated certain constitutional precepts. The Coastal stock options expired during the pendency of this case. Because, however, Paradissiotis still owns Coastal stock that he is prevented from transferring

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1. Our review of the district court's summary judgment is *de novo*, employing the same standards as the district court. *See Urbano v. Continental Airlines, Inc.*, 138 F.3d 204, 205 (5th Cir.), *cert. denied*, __ U.S. __, 119 S. Ct. 509 (1998). Summary judgment is appropriate when, viewing the evidence in the light most favorable to the nonmoving party, the record reflects that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-24, 106 S. Ct. 2548, 2552-53 (1986); *see also* Fed. R. Civ. P. 56(c).

based on OFAC's interpretation of the regulations, the agency's actions have injured him and remain judicially reviewable. In the Libyan Sanction regulations, the Government of Libya is defined broadly to include

> Any person to the extent such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the effective date, acting or purporting to act directly or indirectly on behalf of [the GOL].

31 C.F.R. § 550.304(c). Citing the phrase "to the extent" as a device of limitation, Paradissiotis first maintains that an individual is included within this regulation only when his actions benefit the GOL, directly or indirectly. Thus, Paradissiotis asserts that the regulations do not regulate "personal" transactions that do not benefit the GOL. The only plain meaning of the regulation, according to Paradissiotis, is that he is the government of Libya when he acts for it, and he "retains a personal sphere of activity free from OFAC regulation" when he does not. As a result, he may transfer property, like the Coastal stock, free of OFAC regulation because he retained the stock while in the "personal sphere."[2]

The federal courts' role in this controversy is circumscribed at two levels. First, OFAC's designation of

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2. If Paradissiotis continues to maintain that his acquisition of property in the United States before the Libyan sanctions were promulgated insulates the property from controls, he is wrong. The regulations expressly applied to all property in the United States at the 1986 effective date. *See* 31 C.F.R. § 550.209(a); 31 C.F.R. § 550.301(c).

Paradissiotis as a specially designated national of Libya, being "an agency's application of its own regulations, receives an even greater degree of deference than the *Chevron* standard, and must prevail unless plainly inconsistent with the regulation." *Consarc Corp. v. United States Treasury Dept., Office of Foreign Assets Control*, 71 F.3d 909, 914 (D.C. Cir. 1995) (internal quotation omitted). *See also*, *Thomas Jefferson University v. Shalala*, 512, U.S. 504, 512, 114 S.Ct. 2381, 2386-87 (1994). Second, a challenge to OFAC's regulation must either demonstrate that the statute clearly forbids the statue's interpretation or that the interpretation is unreasonable. *Chevron U.S.A., Inc. v. Natural Resources Defense Counsel, Inc.*, 467 U.S. 837, 843-44, 104 S.Ct. 2778, 2781-83 (1984).

Granting OFAC the extent of deference that it is due, we cannot accept Paradissiotis's argument. Section 550.304(c) is among the definitional provisions in the Libyan sanctions regulations. Its purpose is to cast the widest possible net over individuals who are or have been or are suspected of being actors directly or indirectly on behalf of the government of Libya. Unlike Paradissiotis, we do not read the phrase "to the extent" as a limiting device, whereby individuals who otherwise fall within the definition may splice their activities and attempt to avoid the sanctions regulations. Instead, "to the extent" is, in this context, a proxy for "to whatever extent" or "to any extent" and includes rather than excludes subjects from the regulations. Without such language, people might argue that they were independent contractors or brokers or that mere occasional or incidental work for the government of Libya would exempt them from coverage. OFAC's interpretation of the

language to broadly cover "any person" who has acted or purported to act on behalf of the government of Libya is therefore a reasonable interpretation of its regulation, and even an equally reasonable interpretation by Paradissiotis would not prevail.

The spuriousness of appellant's interpretation appears from the facts of his case. He has been for many years president and a director of two companies that are controlled by the government of Libya. In these positions and others he has pursued Libya's efforts to expand its presence in European markets. Yet by semantic casuistry Paradissiotis asserts that even his activities must be analyzed case-by-case for their coverage by the Libyan sanction regulations. So applied, the regulations could hardly be enforced.

This argument also confuses the definitions provision, where the phrase "to the extent" appears, with the "prohibitions" section, which contains no such limitation. *See* 31 C.F.R. § 550.209. In the prohibition section, the regulation states that "no property or interests in property of the government of Libya that are in the United States . . . may be transferred, paid, exported, withdrawn or otherwise dealt in" without a specific license. 31 C.F.R. § 550.209(a). As the district court put it,

> Once a person falls within the definition of the government of Libya, any transaction by that person is prohibited. The language of the regulations does not prohibit transactions only "to the extent" that they benefit the Government of Libya. There is no exception for transactions

> by a person, who falls within the definition of the "Government of Libya," to the extent that a transaction is characterized as in a "personal sphere."

For these reasons, OFAC's interpretation of its own regulation is not plainly inconsistent with the regulatory language, nor is it unreasonable, and in fact it represents the only practical interpretation.

Paradissiotis's additional contention, that the Libyan sanction regulations are inconsistent with governing law and executive orders, is weak. The IEEPA grants the President sweeping powers to prohibit "any person['s]" participation in any transaction involving or the exercise of any right, power, or privilege with respect to any "property in which any foreign country . . . has any interest." *See* 50 U.S.C. § 1702(a)(1)(B). Pursuant to this broad authority, President Reagan authorized a freeze on all property and interests in property of the GOL and its agencies, controlled entities and instrumentalities that are in the United States or hereafter come into the possession or control of U.S. persons. *See* Executive Order No. 12544, 51 Fed. Reg. 1235. The Secretary of Treasury, through OFAC, promulgated such regulations, "including regulations prescribing definitions," as necessary to exercise the President's authority under the Act. *See* 50 U.S.C. § 1704. OFAC was authorized to include individuals like Paradissiotis within its definition of instrumentalities in order to serve the purposes of the Executive Orders. *See also Consarc Corp. v. United States Treasury Dep't, Office of Foreign Assets Control*, 71 F.3d 909, 913-14 (D.C. Cir.

1995) (all payments by government of Iraq — not merely those in which Iraq maintains an interest — blocked by analogous OFAC sanctions). In matters like this, which involve foreign policy and national security, we are particularly obliged to defer to the discretion of executive agencies interpreting their governing law and regulations. *Haig v. Agee*, 453 U.S. 280, 292 (1981); *see also Miranda v. Sec. of Treasury*, 766 F.2d 1, 3-4 (1st Cir. 1985).

Paradissiotis raises several constitutional challenges to OFAC's actions. It is not clear whether, as a foreign national residing outside the U.S., he can assert these claims, but we shall assume *arguendo* that he can.

First, he complains that his placement on the SDN list constituted a bill of attainder. No circuit court has yet held that the bill of attainder clause, U.S. Const. art. I, § 9, cl. 3, applies to regulations promulgated by an executive agency. *See Walmer v. United States Dep't of Defense*, 52 F.3d 851, 855 (10th Cir. 1995) ("The bulk of authority suggests that the constitutional prohibition against bills of attainder applies to legislative acts, not to regulatory actions of administrative agencies."); *Korte v. Office of Personnel Management*, 797 F.2d 967, 972 (Fed. Cir. 1986); *Marshall v. Sawyer*, 365 F.2d 105, 111 (9th Cir. 1966). Even if we were inclined to apply the bill of attainder clause to OFAC's list of Specially Designated Nationals, however, the regulatory list would not be invalid.

A bill of attainder must "inflict[ ] punishment on an identified individual without provision of a judicial trial." *SBC Communications, Inc. v. FCC*, 154 F.3d 226, 233 (5th

Cir. 1998). OFAC's list does not inflict such punishment. *See id.* at 233-35. The list identifies a group of individuals that OFAC has deemed subject to various sanction programs and whose business activities with U.S. persons will be regulated as long as they are agents of a target country. Even if he were not on the list, Paradissiotis would still be subject to the generally applicable prohibitions of the Libyan sanction regulations, as OFAC ultimately determined that he fell within the regulatory definition of the GOL. The mere publication of his name in the list did not evince an "intent to punish." *Selective Serv. Sys. v. Minnesota Pub. Interest Research Group*, 468 U.S. 841, 851, 104 S. Ct. 3348, 3355 (1984). The SDN list reported Paradissiotis's status under the regulations; no concomitant burden was imposed based solely on his inclusion in the SDN list. The compilation does not violate the Constitution.

Second, Paradissiotis argues that OFAC's application of the Libyan sanction regulations is void for vagueness and does not provide adequate notice to the public of prohibited conduct. Whatever might be true in marginal cases, this challenge is meaningless for Paradissiotis. He knows he is an SDN and is part of the "Government of Libya" and is clearly aware of the consequences of that status.

Third, although Paradissiotis persists in contesting OFAC's regulations requiring the issuance of a license before a SDN may retain legal counsel, he lacks standing. OFAC granted his only request for a license to obtain counsel, and Paradissiotis has not shown that he will be deprived of legal services in the future based on the

regulations. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 2136 (1992) (unless plaintiff can show evidence of concrete, actual or imminent future injury, courts lack standing to consider claims). The district court properly rejected the Sixth Amendment claim for lack of standing.

Fourth, Paradissiotis alleged a Fifth Amendment takings claim because, he asserted, the Coastal Stock options expired in March 1997 while his access to them remained frustrated by OFAC, and he was not compensated. The district court held against him, but it was without jurisdiction. Under the Tucker Act, 28 U.S.C. §§ 1346(a)(2) and 1491(a)(1), the Court of Federal Claims has exclusive jurisdiction for all claims for monetary relief against the United States greater than $10,000. Paradissiotis's monetary damages exceed this jurisdictional amount. Consequently, we must vacate this portion of the district court's judgment. See *Wilkerson v. United States*, 67 F.3d 112, 118 (5th Cir. 1995); *Amoco Prod. Co. v. Hodel*, 815 F.2d 352, 358-59 (5th Cir. 1987).

III. CONCLUSION

For the foregoing reasons, we *AFFIRM* the district court's grant of summary judgment on all points except the takings claim, and *VACATE* with respect to the takings claim.

AFFIRMED in part, *VACATED* in part.

APPENDIX B — MEMORANDUM AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION DATED AUGUST 18, 1997 AND FILED AUGUST 19, 1997

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO.H-96-2314

CHRISTOFOROS PARADISSIOTIS,

Plaintiff,

vs.

ROBERT E. RUBIN, *et al.*,

Defendants.

MEMORANDUM AND ORDER

Plaintiff Christoforos Paradissiotis ("Paradissiotis") has filed a motion to vacate the court's memorandum and opinion of March 17, 1997, or in the alternative, for reconsideration, (Docket Entry No. 53); and a motion for leave to amend his complaint, (Docket Entry No. 55). After a careful review of the pleadings, the motions, the administrative record, the parties' submissions, and the applicable law, this court DENIES plaintiff's motions, for the reasons stated below.

Appendix B

I. The Factual and Procedural Background

The underlying facts concerning the executive orders and regulations made the basis of this lawsuit remain largely undisputed. Docket Entry No. 22, p. 10; *see Chang v. United States*, 859 F.2d 893 (Fed. Cir. 1988); *see also Farrakhan v. Reagan*, 669 F. Supp. 506 (D.D.C. 1987), *aff'd*, 851 F.2d 1500 (D.C.Cir. 1988) (table disposition). Plaintiff's challenge is directed to the legal issues analyzed in this court's earlier opinion.

A. The Executive Orders and Administrative Actions

On January 7 and 8, 1986, President Reagan declared a national emergency under the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. §. 1701 *et seq.*, finding that "the policies and actions of the Government of Libya constitute an unusual and extraordinary threat to the national security and foreign policy of the United States." Executive Order No. 12,543. The President issued Executive Order No. 12,543, 51 Fed. Reg. 875 (1986), prohibiting trade with the Government of Libya and its instrumentalities; and Executive Order No. 12,544, 51 Fed. Reg. 1235 (1986), freezing all property and interests in the property of the Government of Libya, its agencies, instrumentalities, and controlled entities that are in the United States or in the possession or control of United States persons.[1]

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1. (Docket No. 23, Tab A, Exs. 1 and 2). The International Emergency Economic Powers Act, 50 U.S.C. § 1701 *et seq.*, was enacted in 1977 as part of a comprehensive revision of the Trading with the Enemy Act of 1917, 50 U.S.C. app. § 1 *et seq.*, to clarify

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These executive orders authorized the Secretary of the Treasury, in consultation with the Secretary of State, "to take necessary action [and] . . . employ all powers granted [the President] by [IEEPA] to carry out the provision of th[e] Order." Executive Orders No. 12,543 and 12,544. The Secretary of the Treasury delegated his authority and duties relating to the Libyan economic sanctions to the Director of the Office of Foreign Asset Control ("OFAC"). *Cf. Regan v. Wald*, 104 S. Ct. 3026, 3030 n.2 (1984).

On January 16, 1986, the Treasury Department, through OFAC, issued the Libyan Sanctions Regulations ("LSRs"). These regulations implemented the executive orders by regulating commercial and financial transactions with the "Government of Libya," a term defined by the regulations to include entities and persons owned or controlled by, or acting on behalf of, Libya. 31 C.F.R. Part 550. The regulations block transfers of property in which the "Government of Libya"[2] has an interest, if the interest is in

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"the President's authority to regulate international economic transactions during national emergencies" in peacetime. S. Rep. No. 466, 95th Cong., 2 (1977), *reprinted in* 1977 U.S.C.C.A.N. 4540, 4541. Under the IEEPA, the President is granted wide latitude "to deal with an unusual and extraordinary threat, which has its source in whole or in part outside the United States, to the national security, foreign policy, or economy of the United States, if [the President] declares a national emergency with respect to that threat." 50 U.S.C. § 1701(a).

2. The LSRs define the "Government of Libya" to include:

(a) The state and the Government of Libya, as well as any political subdivision, agency, or instrumentality thereof, including the Central Bank of Libya;

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property in the United States or in the possession or control of United States persons. 31 C.F.R. § 550.209.[3]

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> (b) Any partnership, association, corporation, or other organization owned or controlled directly or indirectly by the foregoing;
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> (c) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the effective date, acting or purporting to act directly or indirectly on behalf of any of the foregoing;
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> (d) Any other person or organization determined by the Secretary of the Treasury to be included within this section.

31 C.F.R. § 550.304.

OFAC labels as a Specially Designated National ("SDN") any individual who "is, or has been . . . acting . . . directly or indirectly on behalf of . . . [an organization] owned or controlled directly or indirectly by" the Government of Libya. SDNs of Libya are subject to the same economic prohibitions applicable to the Government of Libya itself.

3. 31 C.F.R. § 550.209, "prohibited transactions involving property in which the Government of Libya has an interest, transactions with respect to securities," provides that:

> (a) Except as authorized by regulations, rulings, instructions, licenses, or otherwise, no property or interests in property of the Government of Libya that

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"Transactions subject to the prohibitions contained [in the LSRs] which are not authorized by general license may be effected only under specific license." 31 C.F.R. § 550.801(b)(1). OFAC determines whether to grant a specific license on a case-by-case basis and may revoke a previously granted license. 31 C.F.R. § 550.803. If an SDN or other applicant is denied a specific license, the applicant may seek to reopen the application, request an explanation for the license denial, or seek a personal interview with OFAC.

B. The SDN List and this Lawsuit

On August 5, 1991, OFAC designated Paradissiotis an SDN who "is, or has been . . . acting . . . directly or indirectly

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> are in the United States that hereafter come within the United States or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches, may be transferred, paid, exported, withdrawn or otherwise dealt in.
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> (b) Unless authorized by a license expressly referring to this section, the acquisition, transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of, or the endorsement or guaranty of signatures on or otherwise dealing in any security (or evidence thereof) registered or inscribed in the name of the Government of Libya is prohibited irrespective of the fact that at any time (either prior to, on, or subsequent to 4:10 p.m. e.s.t., January 8, 1986) the registered or inscribed owner thereof may have, or appears to have, assigned, transferred or otherwise disposed of any such security.

on behalf of . . . [an organization] owned or controlled directly or indirectly by" the Government of Libya. 56 Fed. Reg. 37,156 (1991). The designation made Paradissiotis subject to the same economic prohibitions applicable to the Government of Libya. (Docket Entry No. 23, Tab A, pp. 71-72, 77-79, 120, 221).[4]

On January 4, 1993, Paradissiotis notified OFAC that he had retained a United States law firm for "legal advice and counsel concerning the [LSRs] and ancillary matters" and requested confirmation from OFAC that he did not need a license because he was seeking legal advice as an individual and not as a representative of any SDN-designated organization. (Docket Entry No. 23, Tab A, pp. 69-70). On February 2, 1993, OFAC granted Paradissiotis a license to compensate his United States lawyers. (Docket Entry No. 23, Tab A, pp. 68A-68C, License No. 772).

On May 7, 1993, Paradissiotis asked for "clarification or license for individual SDN [Paradissiotis] to conduct personal affairs," arguing that his "designation as an SDN

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4. OFAC designated Paradissiotis an SDN because of his position as president and board member of two SDN-designated entities, Holborn Investment Company Limited ("HICL"), and its wholly-owned subsidiary, Holborn European Marketing Company Limited ("HEMCL"). Both HICL and HEMCL are subsidiaries of Oilinvest (Netherlands) B.V. ("Oilinvest B.V."). Oilinvest B.V. was itself wholly owned by Oilinvest International, N.V., ("Oilinvest International"), a Libyan state-controlled holding company that is the principal investment arm of the Government of Libya. (Docket Entry No. 23, Tab A, pp. 71-72, 77-80, 83, 89, 112, 114-17, 120, 137, 221, 352-53). Paradissiotis does not dispute the extent or duration of his involvement as an officer or director of companies directly or indirectly controlled by the Government of Libya.

should not cause the application of [the LSRs] to restrict his personal affairs and private business affairs to the extent he is not acting on behalf of . . . any company owned or controlled by the [Government of Libya]." (Docket Entry No. 23, Tab A, p. 66). On May 17, 1993, OFAC responded that all financial dealings with an SDN are prohibited and no exception is made for "personal sphere" transactions of an SDN. Docket Entry No. 23, Tab A, pp. 63-65; *citing* 31 C.F.R. §§ 550.209. OFAC's position, consistently maintained, is that because Paradissiotis is considered to be an agent of entities controlled by the Government of Libya, all financial dealings with him are deemed to be dealings with the Government of Libya. Paradissiotis' lawyers needed a license to receive payment from Paradissiotis because any United States firm that receives funds from Paradissiotis is deemed to be dealing in property in which the Government of Libya has an interest within the meaning of the LSRs. (Docket Entry No. 23, Tab A, pp. 63-64). OFAC also stated that "[b]ecause [Paradissiotis] has been designated an SDN, all property of Mr. Paradissiotis that is in the United States or in the possession or control of U.S. persons is blocked property, irrespective of the date on which he acquired that property." *Id.*; *citing* Executive Order No. 12,544, 57 Fed. Reg. 1235 (Jan. 10, 1986); 31 C.F.R. § 550.209.

On June 11, 1993, Paradissiotis applied for a license to sell the stock he owned in Coastal Corporation, exercise his options in Coastal stock, and receive the proceeds "free and clear of all restrictions on the use of the money."[5]

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5. Paradissiotis was also the president and director of Holborn Oil Trading Limited ("HOTL"), a wholly-owned subsidiary of (Cont'd)

(Docket Entry No. 23, Tab A, p. 62). Paradissiotis argued that OFAC must issue him a license because he had received

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Coastal Corporation ("Coastal"). Before the 1986 executive orders were issued and the LSRs promulgated, Coastal awarded Paradissiotis an option in 2,250 Coastal common stock, "in recognition of his exceptional performance, . . . a commitment made to many employees for their contribution." (Docket Entry No. 23, Tab A, p. 23).

While Paradissiotis was on HOTL's board of directors, HOTL was involved in negotiating an agreement between another wholly-owned Coastal subsidiary, Holborn International, Ltd. ("HIL") and a company wholly owned by the Government of Libya, National Oil Corporation ("NOC"). That agreement resulted in Libya acquiring majority ownership of a German oil refinery. HICL acquired the shares of the Holborn Europa Raffineria GmbH (HER) in 1986. In September 1987, HER purchased the German refinery. Paradissiotis was a comanaging director of HER from April 1987 to June 1988. During that period, the Government of Libya acquired a minority ownership interest in HICL, and the Holborn refinery, in exchange for an agreement to supply the crude oil required by the refinery. The Government of Libya had an option to increase its holdings over time. By January 1991, Oilinvest, B.V., which was wholly owned by a Libyan holding company, owned 66 percent of HICL. The remaining 33.33 percent was owned by the Coastal subsidiary, HOTL. HICL owned HEMCL, which was responsible for sales and marketing of the oil from the German oil refinery in which the Government of Libya had a controlling interest. As of April 1991, three of the five directors for HICL and HEMCL were Libyans who simultaneously served as general managers of Libya's state-owned petroleum company and holder of significant amounts of Libya's offshore banking interests. Paradissiotis served as a director of the Coastal subsidiary, HOTL, that owned the oil refinery with the Government of Libya, and as the president and a director of the subsidiaries controlled by the Government of Libya, HICL and HEMCL.

the Coastal stock options before the 1986 sanctions issued. (*Id.*). On July 14, 1993, OFAC denied Paradissiotis' license application on the ground that Paradissiotis was an SDN and his property was properly blocked under 31 C.F.R. § 550.209. (Docket Entry No. 23, Tab A, p. 61).

On October 13, 1993, Paradissiotis advised OFAC that Oilinvest, B.V. had transferred 55 percent of its outstanding shares to "foreign persons which are not owned or controlled by the [Government of Libya], . . . eliminat[ing] any Libyan control by the [Government of Libya] in HICL and [leaving] an effective interest in HICL of 30 percent to the [Government of Libya]." (Docket Entry No. 23, Tab A, p. 53). Paradissiotis argued that because of the change in stock ownership in Oilinvest, B.V., he should be removed from the list of SDNs of Libya. (*Id.*).

OFAC investigated the change in stock ownership of Oilinvest, B.V. OFAC concluded that the change was a response to, and an attempt to avoid, United Nations sanctions freezing Libyan assets, but did not in fact remove Libyan control over Oilinvest, B.V. OFAC found that none of the new shareholders held more than seven percent of Oilinvest, B.V. stock, while the Government of Libya continued to hold 45 percent of the shares. The shareholders who cumulatively acquired 55 percent of Oilinvest, B.V. had strong ties to Libya. (*Id.*; *see also* Docket Entry No. 23, Tab A, pp. 9-10). OFAC "declined to lift the designation of Mr. Paradissiotis, who remain[ed] president and on the board of directors of [HICL and HEMCL, wholly owned by Oilinvest], as an SDN." (Docket Entry No. 22, Tab C, Declaration of R. Richard Newcomb, OFAC Director, ¶ 21).

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On May 22, 1995, Paradissiotis applied for licenses for "the sale of securities" and "for vacation travel in the United States." (Docket Entry No. 23, Tab A, p. 24). Paradissiotis "requested a license to effectuate the sale of 500 shares of Class A Common Stock in the Coastal Corporation, and the exercise of options and subsequent sale of 2,250 shares of common stock in the Coastal Corporation." (Docket Entry No. 23, Tab A, p. 24). Paradissiotis argued again that financial transactions within a "personal sphere" should be exempt from the LSRs because "personal sphere" transactions are not conducted "on behalf of" the Government of Libya. (*Id.*). Paradissiotis also argued that he was "an appointee representative [in HICL and HEMCL] of a minority shareholder [HOTL] to protect its [HOTL's] interest against the majority [Government of Libya] ownership"; and that he worked "exclusively for the purpose of protecting the financial interest of HOTL, which indirectly protects U.S. interests, in a company now controlled by the [Government of Libya]." (Docket Entry No. 23, Tab A, pp. 25-26).

On September 1, 1995, OFAC denied Paradissiotis' application, stating that Paradissiotis had failed to "provide a basis for issuing a license for travel to the United States or for the sale of securities or other assets under U.S. jurisdiction," and did not "present . . . a reason to consider [Paradissiotis'] removal from the list of [SDNs] of Libya since there is neither a claim nor proof that the relationship between [Paradissiotis] and Libyan entities has been severed." (Docket Entry No. 23, Tab A, p. 20). OFAC requested from Paradissiotis information on "the details of the proposed sale of Coastal common stock . . . [and] the proposed exercise of stock options." (*Id.*).

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On September 15, 1995, Paradissiotis again requested administrative action to remove him from the SDN list. (Docket Entry No. 23, Tab A, p. 13). On September 29, 1995, OFAC denied Paradissiotis' license application and his request to have his name removed from the list of Libyan SDNs. OFAC "determined that changes which the [Government of Libya] made in the shareholding structure of Oilinvest shortly before November 11, 1993, when the United Nations Security Council adopted Resolution No. 883 calling upon member states to freeze Libyan assets, did not in any way dissipate [Libyan] control of Oilinvest. . . . [OFAC] therefore find[s] unpersuasive [Paradissiotis'] assertion . . . that there is 'no relationship between Mr. Paradissiotis and any Libyan entities." (Docket Entry No. 23, Tab A, pp. 9-10).

On July 17, 1996, Paradissiotis sued Robert E. Rubin ("Rubin"), as Secretary of the United States Department of the Treasury, and R. Richard Newcomb ("Newcomb"), as Director of OFAC, challenging: 1) OFAC's initial designation of him as an SDN; 2) OFAC's subsequent refusal to grant him a license to travel to the United States to exercise stock options; and 3) OFAC's refusal to remove his name from the list of SDNs.

On October 30, 1996, Paradissiotis requested a license permitting him to sell his Coastal stock and exercise his Coastal stock options. On December 27, 1996, OFAC denied Paradissiotis' request on the same ground it had asserted in denying his previous license requests.

On December 6, 1996, defendants moved for summary judgment. (Docket Entry No. 21). On March 3, 1997,

Paradissiotis filed an emergency application for a preliminary injunction. (Docket Entry No. 40). On March 17, 1997, this court denied Paradissiotis' preliminary injunction motion, denied Paradissiotis' motion for discovery, and granted defendants' summary judgment motion, on the grounds that OFAC's actions in interpreting and applying the LSRs were not arbitrary and capricious; did not violate the bill of attainder or *ex post facto* provisions of the Constitution; and did not violate Paradissiotis' Fifth or Sixth Amendment rights under the Constitution. (Docket Entry No. 49).

Paradissiotis has filed a motion to vacate this court's March 17 memorandum opinion or, in the alternative, for reconsideration. (Docket Entry No. 53). Paradissiotis has also filed a motion for leave to file a second amended complaint challenging OFAC's December 27, 1996 denial of his license requests as arbitrary and capricious and making a Fifth Amendment taking claim and a *Bivens*[6] claim. (Docket Entry No. 55).

II. The Motion for Reconsideration

Paradissiotis argues that he "was not aware that the Court was considering Federal Defendants Motion for Summary Judgment on March 17, when Plaintiff had submitted substantial legal and factual issues in dispute and evidence of imminent harm to Plaintiff upon the expiration of the options on March 19, 1997." (Docket Entry No. 53,

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6. *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 90 S. Ct. 1999 (1971).

pp. 15-16). Defendants filed their motion for summary judgment on December 6, 1996. (Docket Entry No. 22). This court granted Paradissiotis an extension until February 11, 1997 to respond to defendants' motion. (Docket Entry No. 30). Paradissiotis filed a lengthy response to defendants' motion. (Docket Entry Nos. 33-34). During a March 4, 1997 telephone hearing, Paradissiotis did not tell the court that he intended to file additional pleadings, briefs, or submissions on the pending summary judgment motion. Defendants' motion for summary judgment was properly before this court for determination on March 17, 1997.

A. OFAC's Interpretation and Application of the LSRs

Paradissiotis argues that this court adopted the wrong legal standard in reviewing OFAC's interpretation and application of the LSRs. "The [memorandum and opinion], without review of any evidence of how OFAC applies or should apply the LSR, identifies as meritless Plaintiff's claim that denial of a license to unblock his personal assets is arbitrary. . . . Although OFAC's interpretation is entitled to deference, this does not mean the court can simply refuse to engage in a meaningful analysis of the statute. . . . The first step is not to grant blind deference to OFAC's interpretation, but instead to examine the 'plain language' of the LSR in order to determine if OFAC's interpretation was correct. . . . [T]he court has mistakenly treated the limited deference owed to OFAC's interpretation like a blindfold that keeps the court from engaging in a plain language reading of the LSR." (Docket Entry No. 53, pp. 10, 17-18, 22-23).

The issue, phrased more calmly than Paradissiotis states, is whether the agency's interpretation is indeed consistent with the plain language of the regulations and executive orders. In its March 17, 1997 memorandum and opinion, this court applied the standard of review set out by the Supreme Court,[7] examined in detail the "plain language" of the LSRs, specifically sections 550.304(c) and 550.209, and found "OFAC's interpretation of the LSRs to be consistent with and supported by the language of the regulations and the executive orders." (Docket Entry No. 49, pp. 17-26). In his motion for reconsideration, Paradissiotis makes the same argument he made in his original pleadings and motions, that because of the phrase "to the extent" in section 550.304(c), when a transaction is within a "personal sphere" not conducted on behalf of the Government of Libya, the transaction is not prohibited by the LSRs. (Docket Entry No. 53, pp. 16-25). This court addressed this argument at length in its March 17 memorandum and opinion. (*Id.*, pp. 17-20). Paradissiotis has not made any argument he did not raise in his earlier briefs. He identifies no basis for reconsideration of this court's March 17 memorandum and opinion as to OFAC's interpretation and application of the LSRs.

This court DENIES Paradissiotis' motion to vacate or reconsider the dismissal of Paradissiotis' claim that OFAC's interpretation of the LSRs was arbitrary and capricious and/or an abuse of discretion.

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7. *Chevron U.S.A. v. Natural Resources Defense Council*, 104 S. Ct. 2778 (1984); *Citizens to Preserve Overton Park v. Volpe*, 91 S. Ct. 814 (1971); *see also Consarc Corp. v. United States*, 71 F.3d 909 (D.C. Cir. 1995).

Appendix B

B. The Bill of Attainder Claim

Paradissiotis argues that this court "is wrong that Plaintiff did not raise the fact issue" and that this court erred in "adopt[ing] the Federal Defendants' position that the SDN List and OFAC's application are interpretive and are not 'law making in the traditional sense.' " (Docket Entry No. 53, pp. 14 and 29). In its March 17 memorandum, this court noted that the "Supreme Court has not resolved whether an executive administrative agency's actions may be challenged as a bill of attainder[;] . . . several courts have suggested that the constitutional prohibition applies only to legislative acts." (Docket Entry No. 49, p. 27). However, this court did not simply accept OFAC's argument that the SDN could not be challenged as a bill of attainder because it was not a legislative act. Rather, this court "assume[d], without deciding, for the purpose of this motion, that Paradissiotis may challenge OFAC's publication of the list of SDNs that included Paradissiotis' name as a bill of attainder." (*Id.*, p. 29).

Paradissiotis argues that OFAC's actions constitute "punishment" within the meaning of the bill of attainder prohibition. Paradissiotis made the same argument in his response to defendants' summary judgment motion. (Docket Entry No. 33). This court addressed that "punishment" argument in its March 17 memorandum, examined the same cases Paradissiotis cites in his brief in support of his motion for reconsideration, and found that Paradissiotis did not raise a fact issue that OFAC's actions constituted legislative punishment. The court also found that the administrative record did not evidence an intent to punish and that the SDN

lists served a legitimate governmental purpose. (Docket Entry No. 49, pp. 30-32). Paradissiotis offers no new basis to require a different result.

This court DENIES Paradissiotis' motion for this court to vacate or reconsider its dismissal of his bill of attainder claim.

C. The *Ex Post Facto* Law Claim

Paradissiotis argues that this court relied on an improperly narrow definition of "penal" in its discussion of his *ex post facto* law claim. He also argues that this court failed to consider that "Paradissiotis' designation, unknowingly placed upon him, did not accord him any opportunity to change his conduct to avoid the ensuing punishment[;] . . . a change in the law has resulted in harsh and oppressive punishment upon Mr. Paradissiotis, a result which is by definition penal in nature." (Docket Entry No. 53, pp. 33-34). Paradissiotis' arguments do not take into account *Korte v. OPM*, in which the court noted that "from 'earliest times,' the Supreme Court has construed the *ex post facto* provision to apply only to criminal laws." 797 F.2d 967, 972 (Fed. Cir. 1986); *see also Harisiades v. Shaughnessy*, 342 U.S. 580, 594 (1952) (the *ex post facto* law provision prohibits "penal legislation which imposes or increases criminal punishment"). Even if this court adopted a broad definition of "penal," Paradissiotis did not raise a fact issue that OFAC's actions met this definition. (Docket Entry No. 49, pp. 32-33).

This court DENIES Paradissiotis' motion for this court to vacate or reconsider its dismissal of his *ex post facto* law claim.

Appendix B

D. The Fifth Amendment Claim

Paradissiotis argues that this court erred because he was deprived of his property without procedural due process. (Docket Entry No. 53, pp. 26-28). As the court noted in its March 17, 1997 memorandum and opinion, the constitutionality of OFAC's blocking orders has withstood Fifth Amendment challenges, both under the taking "without just compensation" clause and under the "without due process of law" clause. (Docket Entry No. 49, pp. 33-36).

Courts have upheld executive actions similar to the Libyan sanctions against arguments similar to those raised by Paradissiotis. In *Knox v. Lee*, the Supreme Court observed that:

> a new tariff, an embargo, a draft, or a war may inevitably bring upon individuals great losses; may, indeed, render valuable property almost valueless. They may destroy the worth of contracts. But whoever supposed that, because of this, a tariff could not be changed, or a non-intercourse act, or an embargo be enacted, or a war be declared? . . . . [w]as it ever imagined this was *taking private property without just compensation or without due process of law*?

79 U.S. 457, 551 (1870) (Emphasis added). Over a century later, a district court broadly stated that:

> temporary freezing of foreign-owned assets in this country falls within the constitutional limits

> of the Fifth Amendment and has been used repeatedly as a means of implementing policy. . . . The President has wide latitude to chart and determine foreign policy and the tools at his disposal, including blocking of assets, should be as unencumbered as possible within the limits of the Constitution.

IPT Company Inc., 1994 WL 613371 (S.D.N.Y. 1994); *see also Usery v. Turner Elkhorn Mining Co.*, 96 S. Ct. 2882, 2892 (1976) ("legislation readjusting rights and burdens is not unlawful solely because it upsets otherwise settled expectations").

Assuming, without deciding, that Paradissiotis suffered a deprivation, to which due process requirements applied, the court must determine how much process was due Paradissiotis. *See generally FDIC v. Mallen*, 108 S. Ct. 1780, 1787 (1988). In *IPT Company*, the court found that the freezing of "all property and interests in property within the United States of all entities owned and controlled by the Federal Republic of Yugoslavia," which included blocking all assets of the plaintiff with "no advance notice that [plaintiff's] business was going to be shut down," was not a deprivation of property "without due process of law." *Id.* The court noted that, in general, due process "requires notice and an opportunity to be heard before property can be permanently seized by the Government." *Id.*; *citing United States v. James Daniel Good Real Property*, 114 S. Ct. 492, 498 (1993). The court then noted that "in the case of a temporary deprivation of property, predeprivation hearings are generally not required." *IPT Company*, 1994

WL 613371 at *6; *citing Mathews v. Eldridge*, 424 U.S. 319, 333-334 (1976); *cf. Hodel v. Virginia Surface Mining & Reclamation Association, Inc.*, 101 S. Ct. 2352, 2374 (1981) ("discretion of any official action may be abused. Yet it is not a requirement of due process that there be judicial inquiry before discretion can be exercised. It is sufficient, where only property rights are concerned, that there is at some stage an opportunity for a hearing and a judicial determination");. The court concluded that the blocking orders at issue were "a temporary deprivation of property and as such defendants are not required to grant predeprivation hearings before the enforcement of a temporary blocking order. Therefore, the blocking without a predeprivation hearing is not a violation of due process." *IPT Company*, 1994 WL 613371 at *6.

The lack of a predeprivation hearing is also justified by the "emergency" nature of the LSRs and the need for "prompt action." *See Parratt v. Taylor*, 101 S. Ct. 1908, 1914-15 (1981) (discussing a line of Supreme Court cases holding that the need for quick government action justified the lack of pre-deprivation hearings), *overruled in part on other grounds by Daniels v. Williams*, 106 S. Ct. 662 (1986) (finding no deprivation and that "due process is not implicated by a negligent act of an official causing unintended loss or injury to life, liberty or property"); *Cleveland Board of Education v. Loudermill*, 105 S. Ct. 1487, 1493 (1985) (the lack of predeprivation hearings is justified "in extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event"). In Executive Orders No. 12,543 and 12,544, the President declared a national

emergency under the International Emergency Economic Powers Act, 50 U.S.C. § 1701 *et seq.*, finding that "the policies and actions of the Government of Libya constitute an unusual and extraordinary threat to the national security and foreign policy of the United States."

Paradissiotis argues that his due process rights were violated because he was denied a postdeprivation hearing. However, the statute and regulations allowed Paradissiotis to request general or specific licenses from OFAC; submit evidence; seek to reopen the license application if OFAC denied the request; request an explanation for any license denial; seek a personal interview with OFAC; and challenge OFAC's denial of a license in court as arbitrary and capricious. The Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, also offers procedural safeguards. Paradissiotis' argument is unpersuasive. *See Franklin Savings Association v. Office of Thrift Supervision*, 35 F.3d 1466, 1472 (10th Cir. 1994) ("due process is satisfied by the arbitrary and capricious standard of review of the agency's initial determination"); *CEDC Federal Credit Union v. National Credit Union Administration*, 1996 WL 547505 (2d Cir. 1996) (the "conservatorship statute safeguards the credit union's due process interests by providing postdeprivation review of administrative decisions by the district court"), *cert. denied*, 117 S. Ct. 1426 (1997); *Phillips v. Commissioner*, 51 S. Ct. 608, 611 (1931) ("where only property rights are involved, mere postponement of the judicial enquiry is not denial of due process, if the opportunity given for ultimate judicial determination of liability is adequate").

Paradissiotis asserts that "the alien is entitled to due process where the agency action is outside the authority expressly conferred on the agency by law." (Docket Entry No. 53, p. 28). By this argument in support of due process claim, Paradissiotis reurges his argument that OFAC acted arbitrarily and capriciously in designating him as an SDN of the Government of Libya and in denying his license requests. This court has already determined that OFAC did not act arbitrarily, capriciously, or outside its authority, in designating and interpreting and applying the LSRs and in designating Paradissiotis as an SDN of the Government of Libya. Paradissiotis was afforded administrative and judicial review of OFAC's actions. Defendants did not violate Paradissiotis' procedural due process rights.

This court DENIES Paradissiotis' motion to vacate or reconsider the dismissal of his procedural due process claim.

E. The Sixth Amendment Claim

Paradissiotis argues that he "simply seeks the right to use U.S. legal counsel with respect to any transaction to assure compliance with all U.S. laws. . . . OFAC cannot be permitted to promulgate very complex regulations which impose sever[e] criminal penalties while simultaneously imposing a licensing restriction to effectively deny access to counsel to enable the SDN to avoid violation of those same regulations." Docket Entry No. 53, pp. 34-37; *citing American Airways Charters Inc. v. Reagan*, 746 F.2d 865 (D.C.Cir. 1984). Paradissiotis made this same argument in his response to defendants' summary judgment motion, in

which he also broadly argued that OFAC had denied him "access" to legal counsel.[8]

In *American Airways*, the court limited its inquiry to "the bare formation of an attorney-client relationship," and suggested that the purpose of the sanctions could have been met had the government allowed the plaintiff "to retain — although not to pay — counsel without government license." 746 F.2d at 866-72. In this case, unlike *American Airways*, the issue is not the bare formation of an attorney-client relationship, but the compensation of counsel by an SDN.[9]

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8. Defendants argue that "Plaintiff has yet to establish that, as a non-resident alien who is not within the physical jurisdiction of the United States, he is entitled to the protection of the constitutional provisions he raises. Several courts, including the Supreme Court, have declined to apply extraterritorially several provisions of the Constitution." Docket Entry No. 62, p. 8; *citing United States v. Verdugo-Urquidez* 494 U.S. 259, 274-75 (1990) (rejecting plaintiff's claim that Fourth Amendment protections extent to a non-resident alien who has subjected to a search conducted in Mexico by U.S. agents); Johnson v. Eisentrager, 339 U.S. 763, 784 (1950) (rejecting claim that aliens outside the sovereign territory of the United States are entitled to Fifth Amendment rights). This court did not reach this issue in its March 17 memorandum.

9. OFAC requires a license for a United States person to receive compensation from a Libyan SDN for legal services provided. 31 C.F.R. §§ 550.517(b) and 550.209. OFAC does not require a license for a United States person to provide the following uncompensated legal services to Libyan SDNs: "i) legal advice and counseling to the Government of Libya . . . on the requirements

(Cont'd)

The *American Airways* court did not reach this issue, "caution[ing] that nothing in [its] disposition is properly read as authorizing payment to counsel without the approval of OFAC[;] . . . no fee can be paid to counsel absent a separate, and express, authorization from OFAC." 746 F.2d at 875,874. This court's holding, that OFAC did not violate Paradissiotis' Sixth Amendment rights by requiring him to obtain a license to compensate his attorneys, does not run counter to the holding in *American Airways*.

Paradissiotis argues that he faces imminent prosecution because OFAC's regulations are complex and impose severe criminal penalties for noncompliance. As this court noted in its March 17, 1997 memorandum and opinion, Paradissiotis, who was granted a license to compensate counsel, has not shown that he faces imminent prosecution. *See Arrington v. County of Dallas*, 970 F.2d 1441, 1445 (5th Cir. 1992); *see also Farrakhan v. Reagan*, 669 F. Supp. 506 (D.D.C. 1987), *aff'd*, 851 F.2d 1500 (D.C.Cir. 1988).

(Cont'd)

of and compliance with the laws of any jurisdiction within the United States . . .; 2) representation of the Government of Libya . . . when named as a defendant in or otherwise made a party to domestic U.S. legal, arbitration, or administrative proceedings; 3) initiation of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. Jurisdiction of the Government of Libya that were in existence prior to January 8, 1986; 4) representation of the Government of Libya . . . before any federal agency with respect to imposition, administration, or enforcement of U.S. sanctions against Libya; and 5) provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense." 31 C.F.R. § 550.217.

He cannot satisfy the threshold injury requirement. *See Lujan v. Defenders of Wildlife*, 112 S. Ct. 2130, 2136 (1992).

This court DENIES Paradissiotis' motion to reconsider or vacate the dismissal of his Sixth Amendment right to counsel claim.

F. The Discovery Request

Paradissiotis argues that this court should reconsider its finding that he did not make a strong showing of bad faith on the part of OFAC. (Docket Entry No. 53, Paradissiotis also argues that, if he were allowed to conduct discovery, he could raise a fact issue as to his claims against defendants. For example, Paradissiotis asserts that he could raise a fact issue that "the SDN list effects a permanent change in status of individuals"; that "neither the [Government of Libya] nor any national thereof has an interest in his property rights"; that "OFAC violated its own licensing procedures with respect to Dr. Riecke"; and that "Plaintiff can and will present evidence under Cyprus law, the applicable law, to contradict the facts alleged by Federal Defendants in its brief that Plaintiff has a superior fiduciary duty to the [Government of Libya] by the mere fact of his capacity as an officer of Holborn Investment Co. Ltd." (Docket Entry No. 53, pp. 10-15).

As this court stated in its March 17, 1997 memorandum and opinion, discovery and supplementation of the administrative record is not necessary in this case. (Docket Entry No. 49, pp. 40-43). The record is not incomplete or inadequate to explain the agency action, so as effectively

to frustrate judicial review. Paradissiotis did not, and has not now, made a sufficient showing that the agency engaged in improper behavior or acted in bad faith to make discovery necessary or appropriate to resolve the legal issues presented. Even if OFAC did not apply the LSRs the same way to Paradissiotis as it did to other individuals, "the case-by-case nature of the determination, the legal and factual basis for OFAC's application of the LSRs to Paradissiotis, and the deferential standard of review preclude this argument as a basis for discovery." (*Id.*, p. 40 n.11). This court has found that, in designating Paradissiotis an SDN of Libya and denying his license requests, OFAC acted within its authority, adequately considered the relevant factors, and provided a reasoned basis for its decision. (*Id.*, p. 43).

This court again DENIES Paradissiotis leave to conduct discovery.

III. The Motion for Leave to File a Second Amended Complaint

Paradissiotis seeks leave to amend his complaint to assert: (i) that OFAC's December 27, 1996 denial of his license requests was arbitrary and capricious; "that his property (stock options) has been taken without just compensation in violation of the Fifth Amendment to the Constitution; and (iii) a *Bivens* claim." (Docket Entry No. 55, ¶ 2).

After responsive pleadings have been filed, a party seeking to amend its pleadings must seek "leave of court"

or the "written consent of the adverse party." FED.R.CIV.P. 15(a). Leave to amend is not "automatic," *Wimm v. Jack Eckerd Corp.*, 3 F.3d 137, 139 (5th Cir. 1993), but is "freely given." FED.R.CIV.P. 15(a); *see Silvers v. TTC Industries, Inc.*, 484 F.2d 194, 198 (6th Cir. 1973). The Supreme Court has stated that:

> [i]n the absence of any apparent or declared reason — such as undue delay, bad faith or dilatory motive on the part of the movant, the repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the allowance of the amendment, futility of the amendment, etc. — the leave sought should, as the Rules require, be "freely given." Of course, the grant or denial or an opportunity to amend is within the discretion of the District Court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely an abuse of that discretion inconsistent with the spirit of the Federal Rules.

Forman v. Davis, 83 S. Ct. 227, 230 (1962); *see also Whitaker v. City of Houston, Texas*, 963 F.2d 831, 836 (5th Cir. 1992). "Among the acceptable justifications for denying leave to amend are undue delay, bad faith, . . . and the futility of the amendment." *Jamieson by and through Jamieson v. Shaw*, 772 F.2d 1205, 1208 (5th Cir. 1985), *citing Union Planters National Leasing, Inc. v. Woods*, 687 F.2d 117, 121 (5th Cir. 1982). In order to deny leave on the basis that

the amendment would be futile, the court must find "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Jamieson*, 772 F.2d at 1209; *citing Conley v. Gibson*, 355 U.S. 232, 236 (1974).

Paradissiotis seeks to amend his complaint to assert a taking claim. However, as Paradissiotis concedes, in its March 17, 1997 memorandum and opinion, this court found that the undisputed facts do not as a matter of law give rise to a Fifth Amendment violation in this case. To amend the complaint to assert a taking claim would be futile. *See Chang v. United States*, 859 F.2d 893, 895 (Fed. Cir. 1988).

Paradissiotis also seeks to add a *Bivens* claim against OFAC and Treasury Department federal officials. *See Bivens*, 90 S. Ct. at 2005. This court has found that OFAC did not violate Paradissiotis' constitutional rights. To allow Paradissiotis to assert a *Bivens* claim would be futile.

Paradissiotis seeks to amend his complaint to add a challenge to OFAC's December 27, 1996 denial of his license requests. Paradissiotis presented his license requests and OFAC's December 27, 1996 denial as exhibits in his response to defendants' motion for summary judgment. This court reviewed the record and addressed in detail Paradissiotis' challenge to the OFAC denials in its March 17, 1997 memorandum and opinion. Paradissiotis does not assert new grounds under which he seeks to challenge the most recent denials of his license requests. To allow Paradissiotis to amend his complaint every time he makes a license request that OFAC denies would not serve the

interests of justice, would burden judicial resources, and prolong this litigation unnecessarily.

This court DENIES Paradissiotis' motion for leave to file an amended complaint.

IV. Conclusion

This court DENIES Paradissiotis' motions and ORDERS the parties to submit a proposed order, within 10 days from the date this memorandum and order is entered, reflecting this court's disposition of the claims raised against defendants Rubin and Newcomb.

SIGNED on August 18, 1997, at Houston, Texas.

s/ Lee H. Rosenthal
Lee H. Rosenthal
United States District Judge

APPENDIX C — MEMORANDUM AND OPINION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION DATED AND FILED MARCH 17, 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO.H-96-2314

CHRISTOFOROS PARADISSIOTIS,

Plaintiff,

VS.

ROBERT E. RUBIN, *et al.*,

Defendants.

MEMORANDUM AND OPINION

Pending before this court are a motion to dismiss or, in the alternative, for summary judgment, filed by defendants Robert E. Rubin ("Rubin), Secretary of the United States Department of Treasury, and R. Richard Newcomb ("Newcomb"), Director of the Office of Foreign Assets Control ("OFAC"), (Docket Entry No. 21); a motion to allow discovery filed by plaintiff Christoforos Paradissiotis ("Paradissiotis"), (Docket Entry No. 32); and an application for a preliminary injunction filed by Paradissiotis (Docket Entry No. 40). After a careful review of the pleadings, the motions, the administrative record, the parties' submissions,

and the applicable law, this court DENIES plaintiff's motion to conduct discovery; GRANTS defendants' motion for summary judgment; and DENIES plaintiff's motion for a preliminary injunction, for the reasons stated below.

I. The Factual and Procedural Background

The underlying facts concerning the executive orders and regulations made the basis of this lawsuit are largely undisputed. Docket Entry No. 22, p. 10; *see Chang v. United States*, 859 F.2d 893 (Fed. Cir. 1988); *see also Farrakhan v. Reagan*, 669 F. Supp. 506 (D.D.C. 1987), *aff'd*, 851 F.2d 1500 (D.C.Cir. 1988, table disposition).

A. The Executive Orders and Administrative Actions

On January 7 and 8, 1986, President Reagan declared a national emergency under the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. §. 1701 *et seq.*, finding that "the policies and actions of the Government of Libya constitute an unusual and extraordinary threat to the national security and foreign policy of the United States." Executive Order No. 12,543. The President issued two executive orders, one prohibiting trade with the Government of Libya and its instrumentalities, Executive Order No. 12,543, 51 Fed. Reg. 875 (1986), and the other freezing all property and interests in the property of the Government of Libya, its agencies, instrumentalities, and controlled entities that are in the United States or in the possession or control of United States persons, Executive Order No. 12,544, 51

Fed. Reg. 1235 (1986).[1] (Docket No. 23, Tab A, Exs. 1 and 2).

The executive orders authorized the Secretary of the Treasury, in consultation with the Secretary of State, "to take necessary action [and] . . . employ all powers granted [the President] by [IEEPA] to carry out the provision of th[e] Order." Executive Order Nos. 12,543 and 12,544. The Secretary of the Treasury delegated his authority and duties relating to the Libyan economic sanctions to the Director of the Office of Foreign Asset Control ("OFAC"). *Cf. Regan v. Wald*, 104 S. Ct. 3026, 3030 n.2 (1984).

On January 16, 1986, the Treasury Department, through OFAC, issued the Libyan Sanctions Regulations ("LSRs"). These regulations implemented the executive orders by regulating commercial and financial transactions with the "Government of Libya," a term defined by the regulations to include entities and persons owned or controlled by, or acting on behalf of, Libya. 31 C.F.R. Part 550. The regulations block transfers of property in which the

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1. The International Emergency Economic Powers Act, 50 U.S.C. § 1701 *et seq.*, was enacted in 1977 as part of a comprehensive revision of the Trading with the Enemy Act of 1917, 50 U.S.C. app. § 1 *et seq.*, to clarify "the President's authority to regulate international economic transactions during national emergencies" in peacetime. S. Rep. No. 466, 95th Cong., 2 (1977), *reprinted in* 1977 U.S.C.C.A.N. 4540, 4541. Under the IEEPA, the President is granted wide latitude "to deal with an unusual and extraordinary threat, which has its source in whole or in part outside the United States, to the national security, foreign policy, or economy of the United States, if [the President] declares a national emergency with respect to that threat." 50 U.S.C. § 1701(a).

"Government of Libya" has an interest, if the interest is in property in the United States or in the possession or control of United States persons. 31 C.F.R. § 550.209.[2]

The LSRs define the "Government of Libya" to include:

> (a) The state and the Government of Libya, as well as any political subdivision, agency, or

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2. 31 C.F.R. § 550.209, "prohibited transactions involving property in which the Government of Libya has an interest, transactions with respect to securities," provides that:

> (a) Except as authorized by regulations, rulings, instructions, licenses, or otherwise, no property or interests in property of the Government of Libya that are in the United States that hereafter come within the United States or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches, may be transferred, paid, exported, withdrawn or otherwise dealt in.
>
> (b) Unless authorized by a license expressly referring to this section, the acquisition, transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of, or the endorsement or guaranty of signatures on or otherwise dealing in any security (or evidence thereof) registered or inscribed in the name of the Government of Libya is prohibited irrespective of the fact that at any time (either prior to, on, or subsequent to 4:10 p.m. e.s.t., January 8, 1986) the registered or inscribed owner thereof may have, or appears to have, assigned, transferred or otherwise disposed of any such security.

> instrumentality thereof, including the Central Bank of Libya;
>
> (b) Any partnership, association, corporation, or other organization owned or controlled directly or indirectly by the foregoing;
>
> (c) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the effective date, acting or purporting to act directly or indirectly on behalf of any of the foregoing;
>
> (d) Any other person or organization determined by the Secretary of the Treasury to be included within this section.

31 C.F.R. § 550.304.

OFAC labels as a Specially Designated National ("SDN") any individual who "is, or has been . . . acting . . . directly or indirectly on behalf of . . . [an organization] owned or controlled directly or indirectly by" the Government of Libya. SDNs of Libya are subject to the same economic prohibitions applicable to the Government of Libya itself.

"Transactions subject to the prohibitions contained [in the LSRs] which are not authorized by general license may be effected only under specific license." 31 C.F.R. § 550.801(b)(1). OFAC determines whether to grant a

specific license on a case-by-case basis and may revoke a specific license that was previously granted. 31 C.F.R. § 550.803. If an SDN or other applicant is denied a specific license, the applicant may seek to reopen the application, request an explanation for the license denial, or seek a personal interview with OFAC.

B. Christoforos Paradissiotis

Paradissiotis, a resident and national of Cyprus, is the president and a member of the board of directors of Holborn Investment Company Limited ("HICL") and its wholly-owned subsidiary, Holborn European Marketing Company Limited ("HEMCL"). HICL and HEMCL are subsidiaries of Oilinvest (Netherlands) B.V. ("Oilinvest B.V."). Oilinvest, B.V. was wholly owned by Oilinvest International, N.V., ("Oilinvest International"), a Libyan state-controlled holding company that is the principal investment arm of the Government of Libya. (Docket Entry No. 23, Tab A, pp. 77, 80, 83, 89, 112, 114-17, 137, 352-53). Oilinvest International has extensive holdings in Europe and is primarily involved in expanding the presence of the Government of Libya in the European downstream petrochemical market. (Docket Entry No. 23, Tab A, pp. 77, 80-83, 89-99, 112, 114-17, 137, 352-53).

Paradissiotis is also the president and director of Holborn Oil Trading Limited ("HOTL"), a wholly-owned subsidiary of Coastal Corporation ("Coastal"). Before the 1986 executive orders were issued and the LSRs promulgated, Coastal awarded Paradissiotis an option in 2,250 Coastal common stocks, "in recognition of his

exceptional performance, . . . a commitment made to many employees for their contribution." (Docket Entry No. 23, Tab A, p. 23). The options will expire worthless if not exercised on or before March 19, 1997.

While Paradissiotis was on HOTL's board of directors, HOTL was involved in negotiating an agreement between another wholly-owned Coastal subsidiary, Holborn International, Ltd. ("HIL") and a company wholly owned by the Government of Libya, National Oil Corporation ("NOC"). That agreement resulted in Libya acquiring majority ownership of a German oil refinery. HICL acquired the shares of the Holborn Europa Raffineria GmbH (HER) in 1986. In September 1987, HER purchased the German refinery. Paradissiotis was a comanaging director of HER from April 1987 to June 1988. During that period, the Government of Libya acquired a minority ownership interest in HICL, and the Holborn refinery, in exchange for an agreement to supply the crude oil required by the refinery. The Government of Libya had an option to increase its holdings over time. By January 1991, Oilinvest, B.V., the company wholly owned by a Libyan holding company, owned 66 percent of HICL. The remaining 33.33 percent was owned by the Coastal subsidiary, HOTL. HICL owned HEMCL, which was responsible for sales and marketing of the oil from the German oil refinery in which the Government of Libya had a controlling interest. As of April 1991, three of the five directors for HICL and HEMCL were Libyans who simultaneously served as general managers of Libya's state owned petroleum company and holder of significant amounts of Libya's offshore banking interests. Paradissiotis served as a director of the Coastal subsidiary,

HOTL, that owned the oil refinery with the Government of Libya, and as the president and a director of the subsidiaries controlled by the Government of Libya, HICL and HEMCL.

C. The SDN List and this Lawsuit

On August 5, 1991, OFAC designated Paradissiotis an SDN who "is, or has been . . . acting . . . directly or indirectly on behalf of . . . [an organization] owned or controlled directly or indirectly by" the Government of Libya. 56 Fed. Reg. 37,156 (1991). The designation made Paradissiotis subject to the same economic prohibitions applicable to the Government of Libya. OFAC designated Paradissiotis an SDN because of his position as president and board member of two SDN-designated entities, HICL and HEMCL, subsidiaries of Oilinvest, B.V. (Docket Entry No. 23, Tab A, pp. 71-72, 77-79, 120, 221).

In June 1991, OFAC had designated HICL, HEMCL, HER, and their corporate officers and directors as SDNs of Libya, based on a determination that they were owned and/or controlled by the Government of Libya and its holding companies. (Docket Entry No. 23, Tab A, pp. 120-124). OFAC "examin[ed] such factors as management contracts, bylaws, voting agreements, and whether the remainder of an entity's stock is so widely dispersed that equity ownership of less than 50 percent might still constitute effective control." (Docket Entry No. 23, Tab A, p. 71). Oilinvest B.V. and Oilinvest International were also named SDNs of Libya. (Docket Entry No. 23, Tab A, pp. 120-271).

On January 4, 1993, Paradissiotis notified OFAC that he had retained a United States law firm for "legal advice

and counsel concerning the [LSRs] and ancillary matters" and requested confirmation from OFAC that he did not need a license because he was seeking legal advice as an individual and not as a representative of any SDN-designated organization. (Docket Entry No. 23, Tab A, pp. 69-70). On February 2, 1993, OFAC granted Paradissiotis a license to compensate his counsel. (Docket Entry No. 23, Tab A, pp. 68A-68C, License No. 772).

On May 7, 1993, Paradissiotis asked for "clarification or license for individual SDN [Paradissiotis] to conduct personal affairs," arguing that his "designation as an SDN should not cause the application of [the LSRs] to restrict his personal affairs and private business affairs to the extent he is not acting on behalf of . . . any company owned or controlled by the [Government of Libya." (Docket Entry No. 23, Tab A, p. 66). On May 17, 1993, OFAC responded that all financial dealings with an SDN are prohibited and no exception is made for "personal sphere" transactions of an SDN. Docket Entry No. 23, Tab A, pp. 63-65; *citing* 31 C.F.R. §§ 550.209. OFAC's position, consistently maintained, is that because Paradissiotis is considered to be an agent of entities controlled by the Government of Libya, all financial dealings with him are deemed to be dealings with the Government of Libya. Paradissiotis' counsel needed a license to receive payment from Paradissiotis because any United States firm that receives funds from Paradissiotis is dealing in property in which the Government of Libya has an interest, within the meaning of the LSRs. (Docket Entry No. 23, Tab A, pp. 63-64). OFAC also stated that "[b]ecause [Paradissiotis] has been designated an SDN, all property of Mr. Paradissiotis that is

in the United States or in the possession or control of U.S. persons is blocked property, irrespective of the date on which he acquired that property." *Id.*; *citing* Executive Order No. 12,544, 57 Fed. Reg. 1235 (Jan. 10, 1986); 31 C.F.R. § 550.209.

On June 11, 1993, Paradissiotis applied for a license to sell his Coastal stock, exercise his Coastal stock options, and receive the proceeds "free and clear of all restrictions on the use of the money." (Docket Entry No. 23, Tab A, p. 62). Paradissiotis argued that a license should be issued because he received the stock options before the 1986 sanctions issued. (*Id.*). On July 14, 1993, OFAC denied Paradissiotis' license application on the ground that Paradissiotis was an SDN and his property was properly blocked under 31 C.F.R. § 550.209. (Docket Entry No. 23, Tab A, p. 61).

On October 13, 1993, Paradissiotis advised OFAC that Oilinvest, B.V. had transferred 55 percent of its outstanding shares to "foreign persons which are not owned or controlled by the [Government of Libya], . . . eliminat[ing] any Libyan control by the [Government of Libya] in HICL and [leaving] an effective interest in HICL of 30 percent to the [Government of Libya]." (Docket Entry No. 23, Tab A, p. 53). Paradissiotis argued that because of the change in stock ownership in Oilinvest, B.V., he should be removed from the list of SDNs of Libya. (*Id.*).

OFAC investigated the change in stock ownership of Oilinvest, B.V. OFAC concluded that the change was a response to, and an attempt to avoid, United Nations

sanctions freezing Libyan assets, but did not in fact remove Libyan control over Oilinvest, B.V. None of the new shareholders held more than seven percent of Oilinvest, B.V. stock, while the Government of Libya continued to hold 45 percent of the shares. The shareholders who cumulatively acquired 55 percent of Oilinvest, B.V. had strong ties to Libya. (*Id.*; *see also* Docket Entry No. 23, Tab A, pp. 9-10). OFAC "declined to lift the designation of Mr. Paradissiotis, who remain[ed] president and on the board of directors of [HICL and HEMCL, wholly owned by Oilinvest], as an SDN." (Docket Entry No. 22, Tab C, Declaration of Richard Newcomb, Director, Office of Foreign Assets Control, ¶ 21).

On May 22, 1995, Paradissiotis applied for licenses for "the sale of securities" and "for vacation travel in the United States." (Docket Entry No. 23, Tab A, p. 24). Paradissiotis "requested a license to effectuate the sale of 500 shares of Class A Common Stock in the Coastal Corporation, and the exercise of options and subsequent sale of 2,250 shares of common stock in the Coastal Corporation." (Docket Entry No. 23, Tab A, p. 24). Paradissiotis argued again that financial transactions within a "personal sphere" should be exempt from LSR because such transactions are not conducted "on behalf of" the Government of Libya. (*Id.*). Paradissiotis argued that he was "an appointee representative [in HICL and HEMCL] of a minority shareholder [HOTL] to protect its [HOTL's] interest against the majority [Government of Libya] ownership"; that he worked "exclusively for the purpose of protecting the financial interest of HOTL, which indirectly protects U.S. interests, in a company now controlled by the [Government of Libya]." (Docket Entry No. 23, Tab A, pp. 25-26).

Appendix C

On September 1, 1995, OFAC denied Paradissiotis' application, stating that Paradissiotis had failed to "provide a basis for issuing a license for travel to the United States or for the sale of securities or other assets under U.S. jurisdiction," and did not "present . . . a reason to consider [Paradissiotis'] removal from the list of [SDNs] of Libya since there is neither a claim nor proof that the relationship between [Paradissiotis] and Libyan entities has been severed." (Docket Entry No. 23, Tab A, p. 20). OFAC requested from Paradissiotis information on "the details of the proposed sale of Coastal common stock . . . [and] the proposed exercise of stock options." (*Id.*).

On September 15, 1995, Paradissiotis again "request[ed] administrative action to remove Mr. Paradissiotis from the SDN list. (Docket Entry No. 23, Tab A, p. 13). On September 29, 1995, OFAC denied Paradissiotis' license application and request to have his name removed from the list of Libyan SDNs. OFAC based its denial on the grounds that:

> 1) the standards for SDN designation are set forth in the LSR at § 550.304 and for blocking at § 550.209; 2) pursuant to IEEPA and the LSR, the Secretary has discretion to grant or deny licenses with respect to blocked property; 3) that all property of [Paradissiotis] that is in the United States or in the possession or control of U.S. persons is blocked property of the [Government of Libya] regardless of the date on which he acquired that property and regardless of whether the proposed transaction dealt only with his

> personal affairs; and 4) [Paradissiotis] was not removed from the SDN list or given a license in large part because he remains president and serves on the board of directors of two firms controlled by the Government of Libya (HICL and HEMCL).

(Docket Entry No. 22, p. 19; *citing* Docket Entry No. 23, pp. 9-12). OFAC explicitly stated that it had "determined that changes which the [Government of Libya] made in the shareholding structure of Oilinvest shortly before November 11, 1993, when the United Nations Security Council adopted Resolution No. 883 calling upon member states to freeze Libyan assets, did not in any way dissipate [Libyan] control of Oilinvest. Although the readjustment nominally reduced the [Government of Libya's] role to that of minority shareholder, the United States Government does not view these steps as having terminated the [Government of Libya's] effective control over Oilinvest. Indeed European individuals to whom the [Government of Libya] divested its shares subsequently were determined to be SDNs of Libya. *See* 59 Fed. Reg. 51,106 (October 7, 1994). [OFAC] notes that the change in ownership interest was made at a time when the Security Council's deliberations on further Libyan sanctions had become public. It remains the position of the United States government that Oilinvest is an entity of the [Government of Libya]. We therefore find unpersuasive [Paradissiotis'] assertion . . . that there is 'no relationship between Mr. Paradissiotis and any Libyan entities." (Docket Entry No. 23, Tab A, pp. 9-10).

On July 17, 1996, Paradissiotis sued Rubin, as Secretary of the United States Department of the Treasury, challenging

1) OFAC's initial designation of him as an SDN; 2) OFAC's subsequent refusal to grant him a license to travel to the United States to exercise stock options; and 3) OFAC's refusal to remove his name from the list of SDNs.

Defendants have moved for summary judgment dismissing Paradissiotis' claims. (Docket Entry No. 21). Paradissiotis has filed an emergency application for a preliminary injunction. (Docket Entry No. 40).

II. The Applicable Legal Standards

A. The Summary Judgment Standard

Summary judgment is appropriate if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56. Under FED. R. CIV. P. 56(c), the moving party bears the initial burden of "informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue for trial." *Celotex Corp. v. Catrett*, 106 S. Ct. 2548, 2553 (1986); *Norman v. Apache Corp.*, 19 F.3d 1017, 1023 (5th Cir. 1994). The party moving for summary judgment must demonstrate the absence of a genuine issue of material fact, but need not negate the elements of the nonmovant's case. *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc). If the moving party fails to meet its initial burden, the motion for summary judgment must be denied, regardless of the nonmovant's response. *Little*, 37 F.3d at 1075.

When the moving party has met its Rule 56(c) burden, the nonmovant cannot survive a motion for summary judgment by resting on the mere allegations of its pleadings. *McCallum Highlands, Ltd. v. Washington Capital Dus, Inc.*, 66 F.3d 89, 92 (5th Cir. 1995). The nonmovant must go beyond the pleadings and designate specific facts showing that there is a genuine issue for trial. *Little*, 37 F.3d at 1075; *citing Celotex*, 106 S. Ct. at 2553-54.

In deciding a summary judgment motion, "[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." *Anderson v. Liberty Lobby, Inc.*, 106 S. Ct. at 2513. "Rule 56 *mandates* the entry of summary judgment, after adequate time for discovery, and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Little*, 37 F.3d at 1075; *citing Celotex*, 106 S. Ct. at 2552.

B. The Preliminary Injunction Standard

A party seeking a preliminary injunction must establish the following four elements:

> (1) a substantial likelihood that a plaintiff will prevail on the merits, (2) a substantial threat that irreparable injury will result if the injunction is not granted, (3) that the threatened injury outweighs the threatened harm to the defendant, and (4) that granting the preliminary injunction will not disserve the public interest.

Rodriguez v. United States, 66 F.3d 95, 97 (5th Cir. 1995). If a moving party cannot meet any of the four prerequisite elements, a court may not grant the party preliminary relief. *Enterprise International Inc. v. Corporacion Estatal Petrolera Ecuatoriana*, 762 F.2d 464, 472 (5th Cir. 1985); *see also Allied Marketing Group, Inc. v. CDL Marketing, Inc.*, 878 F.2d 806, 809 (5th Cir. 1989).

III. The Administrative Challenge to OFAC's Actions

A. The Standard of Review

A court's review of an administrative agency decision is governed by the Administrative Procedure Act ("APA"). 5 U.S.C. § 551 *et seq*. An agency decision must be sustained unless the reviewing court finds that it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A); *see also Milena Ship Management Co. v. Newcomb*, 995 F.2d 620, 623 (5th Cir. 1993). A court makes its determination, based "on the full administrative record that was before the [administrative officer] . . . at the time he made his decision," by reviewing whether the agency acted within its authority, adequately considered all the relevant factors, and provided a reasoned basis for its decision. *Citizens to Preserve Overton Park v. Volpe*, 91 S. Ct. 814, 823-25 (1971).

A court gives special deference to an agency's interpretation of an executive order the agency is charged with administering. *Milena Ship Management*, 995 F.2d at 623-24; *see also DeCuellar v. Brady*, 881 F.2d 1561, 1565 (11th Cir. 1989), *cert. denied*, 111 S. Ct. 245 (1990); *cf.*

Miranda v. Secretary of the Treasury, 766 F.2d 1, 3-4 (1st Cir. 1985) (judicial review of the executive branch's conduct in foreign relations is limited). "[A]n interpretation of the [blocking regulations] by OFAC, being an agency's application of its own regulations, receives an even greater degree of deference than the *Chevron* standard, and must prevail unless plainly inconsistent with the regulation." *Consarc Corporation v. United States*, 71 F.3d 909, 915 (D.C.Cir. 1995). A "challenge to [OFAC's] interpretation must either demonstrate that the statute clearly forbids the agency's interpretation or that the interpretation is unreasonable." *Consarc*, 71 F.3d at 914; *citing Chevron U.S.A. v. Natural Resources Defense Council*, 104 S. Ct. at 2778, 2781-83 (1984). A "court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency." *Chevron*, 104 S. Ct. at 2781-83, *quoted in DeCuellar*, 881 F.2d at 1565.

B. OFAC's Interpretation of the LSRs: The Property at Issue

Paradissiotis argues that OFAC erred in interpreting the LSRs: (1) to block property and prohibit transfers occurring in a "personal sphere"; and (2) to block property acquired before the 1986 sanctions took effect.

1. The Language of the LSRs

Paradissiotis argues that the "plain language of LSR § 550.304(c) . . . results in a conclusion that a proposed transaction with Plaintiff is prohibited 'to the extent' that

he is acting on behalf of the [Government of Libya]." (Docket Entry No. 33, pp. 29-34). Paradissiotis argues that because of the "to the extent" language, when a transaction is within a "personal sphere" not conducted "on behalf of the Government of Libya," the transaction is not prohibited by the LSRs. (*Id.*).

Section 550.304(c), which contains the "to the extent" language, appears in the section defining the "Government of Libya" for the purposes of the LSRs. In the definition of the "Government of Libya," section 550.304(c) includes those "persons" who OFAC has reason to believe are acting or have acted directly or indirectly on behalf of the Government of Libya or one of its organizations. The "prohibitions" section of the regulations, unlike the "definitions" section, does not contain the "to the extent" limitation. *See* 31 C.F.R. § 550.209. In the prohibitions section, the regulations state that "*no property* or interests in property of the Government of Libya that are in the United States . . . may be transferred, paid, exported, withdrawn or otherwise dealt in" without a specific license. 31 C.F.R. § 550.209(a) (emphasis added). Once a person falls within the definition of the Government of Libya, any transaction by that person is prohibited. The language of the regulations does not prohibit transactions only "to the extent" that they benefit the Government of Libya. There is no exception for transactions by a person, who falls within the definition of the "Government of Libya," to the extent that a transaction is characterized as in a "personal sphere."

The plain language of the regulations does not require OFAC to determine that the ultimate beneficiary of the

property transfer is the SDN personally, as opposed to the SDN acting on behalf of the Government of Libya.[3] Once a person falls under the LSRs' definition of the "Government of Libya," the LSRs and the executive orders broadly block "*all* property and interests in property . . . in the United States . . ." and allow prohibition of "transfers of any property or any transactions involving the transfer of *anything* of economic value by any United States person to the Government of Libya [as defined]." *See* Executive Order No. 12,543 (emphasis added).

Applying a deferential standard of review, this court finds OFAC's interpretation of the LSRs to be consistent with and supported by the language of the regulations and the executive orders. *See Chevron*, 104 S. Ct. at 2782; *see also Consarc*, 71 F.3d at 915 ("an interpretation of the [blocking regulations] by OFAC, being an agency's application of its own regulations, receives an even greater degree of deference than the *Chevron* standard, and must prevail unless plainly inconsistent with the regulation"). OFAC's interpretation that the executive orders and the LSRs allow it to block all property of controlled entities of Libya, without determining whether the particular transaction at issue will ultimately benefit or serve the

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3. *Cf. DeCuellar v. Brady*, 881 F.2d 1561 (11th Cir. 1989) (the Treasury "is at least presumptively acting reasonably, and without being subject to the charge of arbitrary and tyrannical action, if it assumes that assets owned by a Cuban corporation are indeed assets in which there is a Cuban national interest"), *cert. denied*, 111 S. Ct. 245 (1990). By analogy, OFAC was reasonable in assuming that any funds received from a Libyan SDN would be property in which the Government of Libya has an interest.

interests of the Government of Libya, directly or indirectly, is a reasonable interpretation of the language of the provisions. The interpretation is consistent with the sanction's stated goals of isolating Libya by severing its economic ties to the rest of the world. *See Miranda v. Secretary of the Treasury*, 766 F.2d 1, 5 (1st Cir. 1985); *cf. Tran Qui Than v. Regan*, 658 F.2d 1296, 1304 (9th Cir. 1981), *cert. denied*, 495 U.S. 1069 (1982) (the act "deprive[s] enemies, actual or potential, of an opportunity to secure advantages to themselves or to perpetrate wrongs against the United States or its citizens through the use of assets that happened to be in this country").

This court finds unpersuasive Paradissiotis' argument that the language of the regulations precludes OFAC's position that Paradissiotis cannot exercise his Coastal options under an exception for "personal sphere" transactions of an SDN.

2. Property Acquired Before the LSRs Were Issued

Paradissiotis argues that OFAC erred in blocking his exercise of his Coastal stock options under the LSRs because he earned the stock options before the President issued the 1986 executive orders and before the LSRs were promulgated.

The LSRs provide that:

> no property or interests in property of the Government of Libya that *are* in the United

> States that hereafter come within the United States or that *are* or hereafter come within the possession or control of U.S. persons, including their overseas branches, may be transferred, paid, exported, withdrawn or otherwise dealt in.

31 C.F.R. § 550.209(a) (emphasis added). The LSRs cover property that was in the United States in 1986[4] and property that came into the United States "[t]hereafter." 31 C.F.R. § 550.209(a). Property that was in the United States on January 8, 1986 includes property that was acquired before January 8, 1986.

The regulations do not make the date on which property was acquired a limiting factor. Nothing in the language of the regulations supports Paradissiotis' argument that the LSRs do not apply to property acquired before 1986. To the contrary, the property to which the regulations apply is broadly defined. The regulations provide that the "terms property and property interests shall include, but not by way of limitation, money, checks, . . . any other financial securities, . . . any other evidences of title, . . . contracts of any nature whatsoever, . . . any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent." 31 C.F.R. § 550.314.

An interpretation of the LSRs that takes into account the presence of an SDN's property in the United States, but

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4. The effective date of LSR section 550.209 was 4:10 p.m. e.s.t., January 8, 1986. 31 C.F.R. § 550.301(c).

not the date the SDN acquired the property, is consistent with the stated goal of the sanctions, to "limit[] Libya's ability to rely on non-U.S. individuals like Plaintiff to fulfill its economic goals in the world markets and ensuring that property of instrumentalities of the Government of Libya located in the United States is not ultimately used for the benefit or on behalf of the Libyan government or its controlled entities." (Docket Entry No. 45, p. 30).

This court finds OFAC's interpretation of the LSRs to include property acquired before January 1986 supported by the language of the LSRs and a reasonable application of the regulatory provisions. *See generally Chevron*, 104 S. Ct. at 2782; *see also Milena*, 995 F.2d 620 (the court upheld the detention of four vessels, blocked "*quickly* following the issuance" of sanctions orders against the Federal Republic of Yugoslavia, and presumably acquired before the issuance of the orders); *cf. DeCuellar*, 881 F.2d 1561 (the court upheld the Secretary's denial of a license authorizing the liquidation of trust assets, and maintained the blocking of assets of a trust created in 1936, before the promulgation of the Cuban Assets Control Regulations in 1963); *cf. Consarc*, 71 F.3d 909 (the court upheld a 1990 block on $6.4 million pledged in 1989).

Paradissiotis has not established that OFAC's interpretation of the LSRs is unreasonable or clearly forbidden by the statutory provisions. *Consarc*, 71 F.3d at 914.

Appendix C

C. OFAC's Interpretation of the LSRs: The Person at Issue

Paradissiotis argues that OFAC erred in designating him an SDN of Libya under 31 C.F.R. § 550.304(c). Paradissiotis does not dispute the breadth or depth of his long-standing relationships with companies directly or indirectly controlled by the Government of Libya. Paradissiotis challenges OFAC's determination that Paradissiotis' position as an officer of a corporation controlled by a corporation owned by a holding company of the Government of Libya[5] rendered Paradissiotis an SDN, an "instrumentalit[y] or entit[y] . . . owned or controlled directly or indirectly by" the Government of Libya. *See* 31 C.F.R. § 550.304.

Paradissiotis asserts that he was "an appointee representative [in HICL and HEMCL] of a minority shareholder [HOTL] to protect [HOTL] interests against the [Government of Libya] majority ownership"; and that he worked "exclusively for the purpose of protecting the financial interest of HOTL, which indirectly protects U.S. interests, in a company controlled by the [Government of Libya." (Docket Entry No. 23, Tab A, pp. 25-26). Paradissiotis does not dispute that as president and director he has a fiduciary duty to act in the best interest of HICL and HEMCL, to benefit the companies and all their shareholders, including the Government of Libya.

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5. Paradissiotis appears to agree that HICL was controlled by the Government of Libya in 1991. *See* Docket Entry No. 23, Tab A, pp. 25-26 ("a company now controlled by the GOL").

Appendix C

This court finds that in designating Paradissiotis an SDN of Libya, OFAC acted within its authority, adequately considered the relevant factors, and provided a reasoned basis for its decision. *Overton Park*, 91 S. Ct. at 823-25. In light of the administrative record and the broad purposes of the LSRs, OFAC's determination was reasonable. *See Milena Ship Management Co. v. Newcomb*, 995 F.2d 620, 624 (5th Cir. 1993); *see also IPT Company v. United States*, 1994 WL 613371 (S.D.N.Y. 1994); *see also DeCuellar*, 881 F.2d 1561.

Paradissiotis argues that in 1993, Oilinvest B.V. transferred 55 percent of its outstanding shares to "foreign persons which are not owned or controlled by the [Government of Libya], . . . eliminat[ing] any Libyan control [of] HICL and [leaving] an effective interest in HICL of 30 percent to the [Government of Libya]." (Docket Entry No. 23, Tab A, p. 53). OFAC investigated the change in the stock ownership and concluded that the Government of Libya still effectively controlled HICL. OFAC determined that the change in the HICL stock ownership was a response to the United Nations Security Council resolution calling on member states to freeze qualifying financial resources of the Government of Libya within their territories. (Docket Entry No. 23, Tab A, pp. 55-60, 339-41, 348). The "foreign persons" who acquired the aggregate 55 percent interest in Oilinvest B.V. were "minority partners in a number of Oilinvest European affiliates"; several of them were determined by OFAC to have had ties to Libya. (Docket Entry No. 23, Tab A, p. 57). After September 1993, no single shareholder held more than a seven percent share in Oilinvest B.V., except the Government of Libya, which

owned forty-five percent. (Docket Entry No. 23, Tab A, p. 275). OFAC concluded that the Government of Libya maintained direct or indirect control in Oilinvest B.V. and HICL after 1993.[6] This court finds OFAC adequately considered the relevant issues and provided a reasoned basis for its decision. *See Overton Park*, 91 S. Ct. at 823-25.

OFAC determined that Paradissiotis, as president and board member of entities controlled directly or indirectly by the Government of Libya, was himself an instrumentality of the Government of Libya, who acted or had acted directly or indirectly on behalf of the Government of Libya, or was controlled directly or indirectly by the Government of Libya.

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6. OFAC notified Paradissiotis that it had "determined that changes which the [Government of Libya] made in the shareholding structure of Oilinvest shortly before November 11, 1993, when the United Nations Security Council adopted Resolution No. 883 calling upon member states to freeze Libyan assets, did not in any way dissipate [Libyan] control of Oilinvest. Although the readjustment nominally reduced the [Government of Libya's] role to that of minority shareholder, the United States Government does not view these steps as having terminated the [Government of Libya's] effective control over Oilinvest. Indeed European individuals to whom the [Government of Libya] divested its shares subsequently were determined to be SDNs of Libya. *See* 59 Fed. Reg. 51,106 (October 7, 1994). [OFAC] notes that the change in ownership interest was made at a time when the Security Council's deliberations on further Libyan sanctions had become public. It remains the position of the United States government that Oilinvest is an entity of the [Government of Libya]. we therefore find unpersuasive [Paradissiotis'] assertion . . . that there is 'no relationship between Mr. Paradissiotis and any Libyan entities." (Docket Entry No. 23, Tab A, pp. 9-10).

OFAC's determination was rational and not plainly inconsistent with the LSRs. *See Milena Ship Management Co.*, 995 F.2d at 624; *see also Miranda*, 766 F.2d at 4.

Having determined that Paradissiotis was an SDN, based on its reasonable interpretation of the LSRs, OFAC acted rationally in blocking "*all* [Paradissiotis'] property and interests in property" within United States jurisdiction, without regard to the time the property was acquired or whether the property was of a "personal" nature. *See* Executive Order No. 12,543; *see also* 31 C.F.R. § 550.209.

Paradissiotis' challenge to OFAC's interpretation and application of the LSRs, by designating Paradissiotis as an SDN and prohibiting Paradissiotis from exercising his Coastal stock options, is meritless.

IV. The Constitutional Claims

A. The Bill of Attainder Claim

Paradissiotis argues that "OFAC's legislative promulgation of the SDN List and [OFAC's] broad interpretation of its authorization and power to use such SDN List . . . constitute[] a prohibited bill of attainder under the Constitution, Article I, Section 9, Clause 3." (Docket Entry No. 33, p. 9). Paradissiotis "does not assert . . . that the IEEPA or the Executive Orders constitute a bill of attainder." (*Id.*).

A bill of attainder is "a law that legislatively determines guilt and inflicts punishment upon an identifiable individual

without provision of the protections of a judicial trial." *Nixon v. Administrator of General Services*, 97 S. Ct. 2777, 2803 (1977); *citing* U.S. CONST., ART. I § 9 CL. 3. The "Bill of Attainder Clause . . . reflect[s] the Framers' belief that the Legislative Branch is not so well suited as the politically independent judges and juries to the task of ruling upon the blameworthiness of, and levying appropriate punishment upon, specific persons." *United States v. Brown*, 85 S. Ct. 1707, 1713 (1965); *see also Richmond v. J.A. Croson Co.*, 109 S. Ct. 706, 732 (1989).[7]

The Supreme Court has not resolved whether an executive administrative agency's actions may be challenged as a bill of attainder. *See Dehainaut v. Pena*, 32 F.3d 1066, 1070-71 (7th Cir. 1994) ("the Supreme Court has not directly ruled either way on the applicability of the attainder ban to actions of executive and administrative agencies[;] . . . historically, [the attainder ban] was viewed as a limitation on the power of the legislature alone"), *cert. denied*, 115 S. Ct. 1427 (1995). However, several courts have suggested that the constitutional prohibition applies

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7. *See also Richmond v. J.A. Croson Co.*, 109 S. Ct. 706, 732 (1989) ("legislatures are primarily policymaking bodies that promulgate rules to govern future conduct. The Constitutional prohibitions against the enactment of ex post facto laws and bills of attainder reflect a valid concern abut the use of the political process to punish or characterize past conduct of private citizens. It is the judicial system, rather than the legislative process, that is best equipped to identify past wrongdoers and to fashion remedies that will create the conditions that presumably would have existed had no wrong been committed") (Stevens, J., concurring in part and concurring in judgment).

only to legislative acts. *See Walmer v. United States*, 52 F.3d 851, 855 (10th Cir.) ("the bulk of authority suggests that the constitutional prohibition against bills of attainder applies to legislative acts, not to regulatory actions of administrative agencies"), *cert. denied*, 116 S. Ct. 474 (1995); *see also Korte v. OPM*, 797 F.2d 967 (Fed. Cir. 1986) ("[t]he clause is a limitation on the authority of the legislative branch. . . . [Plaintiff] has cited no authority, and we are aware of none, holding that the clause applies to the executive branch"); *see also Nixon*, 97 S. Ct. at 2803; *see also Brown*, 85 S. Ct. at 1713 ("the *Legislative Branch* is not so well suited"); *see also Landgraf v. USI Film Products*, 114 S. Ct. 1483, 1497 (1994) ("the prohibitions on 'Bills of Attainder' in Art. I, §§ 9-10, prohibit *legislatures* from singling out disfavored persons and meting out summary punishment for past conduct"); *cf. Joint Anti-Fascist Refugee Committee v. McGrath*, 71 S. Ct. 624 (1951).

If the bill of attainder provision applies to the regulatory acts of administrative agencies carrying out executive orders, it may do so by applying to "functional equivalents" of legislative acts. *See Dehainaut*, 32 F.3d at 1071. OFAC's designation of Paradissiotis as an SDN and OFAC's publication of that designation are not "lawmaking" in the traditional sense. *See United States v. Ellen*, 961 F.2d 462, 466 (4th Cir. 1992) (the court found an agency manual interpretive, not legislative, because it did not "purport to create new law or impose new rights or duties . . . and it was not promulgated through the notice and comment rulemaking procedures of the [APA] through which all legislative rules must pass"), *cert. denied*, 506 U.S. 875 (1992).

Appendix C

OFAC argues that by designating a list of SDNs, OFAC does not make law but provides constructive notice to United States persons that financial and commercial transactions with those on the list are prohibited without a license. (Docket Entry No. 45, p. 21). OFAC argues that if it had not published its SDN list that included Paradissiotis, the IEEPA, the executive orders, and the LSRs would still prohibit any United States person with actual notice of Paradissiotis' status as an instrumentality of the Government of Libya from engaging in prohibited transactions with Paradissiotis. Docket Entry No. 45, p. 21; *citing* 31 C.F.R. §§ 550.201-550.209. "OFAC's SDN list, which merely publicly announces Plaintiff's status under the blocking orders but does not change his status, is not the functional equivalent of a legislative enactment as contemplated by the Bill of Attainder Clause." (Docket Entry No. 45, pp. 21-22).

This court assumes, without deciding, for the purpose of this motion, that Paradissiotis may challenge OFAC's publication of the list of SDNs that included Paradissiotis' name as a bill of attainder. To defeat summary judgment, Paradissiotis must raise an issue as to three necessary elements of a bill of attainder: 1) specification of the affected persons; 2) punishment; and 3) lack of a judicial trial. *Dehainaut*, 32 F.3d at 1070.

Paradissiotis argues that the identification of an individual by name should raise an almost conclusive presumption of unconstitutionality. (Docket Entry No. 33, p. 13). However, a finding of a bill of attainder "requires not merely 'singling out' but also punishment" and the

absence of a judicial trial. *Plaut v. Spendthrift Farm, Inc.*, 115 S. Ct. 1447, 1463 n.9 (1995) ("the premise that there is something wrong with a particularized legislative action is of course questionable. While legislatures usually act through laws of general applicability, that is by no means their only legitimate mode of action. Private bills in Congress are still common"); *citing United States v. Lovett*, 66 S. Ct. 1073, 1078-1080 (1946); *Nixon*, 97 S. Ct. at 2805 (Congress may legislate "a legitimate class of one").

The Supreme Court has set out a three-pronged test to determine whether a particular enactment inflicts punishment: 1) does the enactment fall within the historical meaning of legislative punishment; 2) when viewed in terms of the type and severity of burdens imposed, does the enactment further nonpunitive legislative purposes; and 3) does the record evince an intent to punish. *See Selective Service System v. Minnesota Public Interest Research*, 104 S. Ct. 3348, 3356 (1984); *see also Nixon*, 97 S. Ct. at 2806-2807. With regard to the first prong, "at common law, bills of attainder traditionally imposed the death penalty, imprisonment, banishment, and the punitive confiscation of property." *Walmer v. United States Department of Defense*, 835 F. Supp. 1307, 1314-15 (D. Kan. 1993), *aff'd*, 52 F.3d 851 (10th Cir.), *cert. denied*, 116 S. Ct. 474 (1995). "A legislative enactment barring designated individuals or groups from participation in specified employments or vocations [has been added] to the list of historically impermissible punishments." *Dehainaut*, 32 F.3d at 1071; *citing Nixon*, 97 S. Ct. at 2806. With regard to the second prong, an "enactment may pass scrutiny under bill of attainder analysis if it seeks to achieve legitimate and non-

punitive ends and was not clearly the product of punitive intent." *Dehainaut*, 32 F.3d at 1071. Finally, the Supreme Court has narrowly construed the third prong, whether the record evinces an intent to punish, requiring "unmistakable evidence of punitive intent" before invalidating an enactment. *Selective Service*, 104 S. Ct. at 3356, *cited in Dehainaut*, 32 F.3d at 1072.

Paradissiotis does not raise a fact issue that his SDN designation is legislative punishment within its historical meaning. *See Nixon*, 97 S. Ct. at 2806-2807 ("forbidden legislative punishment is not involved merely because the Act imposes burdensome consequences"); *see also United States v. Lovett*, 66 S. Ct. 1073, 1083 (1946) ("the fact that harm is inflicted by governmental authority does not make it punishment"). The administrative record does not evince an intent to punish Paradissiotis. *See Dehainaut*, 32 F.3d at 1072.

The SDN lists, published as part of OFAC's implementation of the Libyan sanctions, have a legitimate governmental purpose. Courts have upheld blocking orders such as the Libyan sanctions, finding a general purpose of "preserving the assets involved for possible use in some satisfaction of American claims against the country involved," *Nielsen v. Secretary of the Treasury*, 424 F.2d 833, 840 (D.C.Cir. 1970), of putting "control of foreign assets in the hands of the President. . . ." *Propper v. Clark*, 337 U.S. 472, 493 (1949), and of "serv[ing] as a bargaining chip to be used by the President when dealing with a hostile country." *Dames & Moore v. Regan*, 453 U.S.

654, 673 (1981).[8] OFAC's designation of Paradissiotis as an SDN of Libya does not punish Paradissiotis within the meaning of the bill of attainder clause. *See Dehainaut*, 32 F.3d at 1070-72.

OFAC has not violated the bill of attainder provision of the Constitution.

B. The Ex Post Facto Law Claim

The ex post facto provision of the United States Constitution forbids Congress from enacting any law "which imposes a punishment for an act which was not punishable at the time it was committed, or imposes additional punishment to that then prescribed." *Weaver v. Graham*, 101 S. Ct. 960, 964 (1981). The provision "appli[es] only to penal legislation." *Landgraf*, 114 S. Ct. at 1497 n.19; *citing Calder v. Bull*, 3 Dall. 386, 390-91, 1 L. Ed. 648 (1798); *see also Korte v. OPM*, 797 F.2d 967, 972 (Fed. Cir.. 1986) ("from 'earliest times,' the Supreme Court has construed the ex post facto provision to apply only to criminal laws"). The provision prohibits criminal laws that punish as a crime an act previously committed, which was innocent when done, make more burdensome the punishment for a crime already committed, or deprive one

8. In *Deveau v. Braisted*, 80 S. Ct. 1146, 1155 (1960), the Supreme Court upheld a state statute disqualifying convicted felons from serving in any office in a waterfront labor organization, noting that the statute's purpose was not to punish "but to devise what was felt to be a much-needed scheme of regulation of the waterfront, and for the effectuation of that scheme it became important whether individuals had previously been convicted of a felony."

charged with a crime of any defense available according to law at the time the crime was committed. *Collins v. Youngblood*, 110 S. Ct. 2715, 2723 (1990); *see Harisiades v. Shaughnessy*, 342 U.S. 580, 594 (1952) (the provision prohibits "penal legislation which imposes or increases criminal punishment"); *see also United States v. Domino*, 62 F.3d 716, 720 (5th Cir. 1995)("a criminal law is ex post facto . . ."); *see also Dehainaut*, 32 F.3d at 1073.

The executive orders, the LSRs, and the SDN list, intended to limit the Government of Libya's ability to benefit from property interests located within the United States, are not criminal punishments for crimes committed by Paradissiotis before the implementation of the orders and regulations. *Cf. Landgraf*, 114 S. Ct. at 1499 n.24 ("[e]ven uncontroversially prospective statutes may unsettle expectations and impose burdens on past conduct . . .[;] if every time a man relied on existing law in arranging his affairs, he were made secure against change in legal rules, the whole body of our law would be ossified forever . . .[;] a statute is not made retroactive merely because it draws upon antecedent facts for its operation") (internal quotations and citations omitted).

OFAC's designation of Paradissiotis as a Libyan SDN does not violate the ex post facto provision of the Constitution.

C. The Due Process Claim

The due process clause of the Fifth Amendment to the United States Constitution provides that no person shall "be

deprived of life, liberty, or property, without due process of law." In determining whether a "questioned governmental activit[y] impairs a valid contract to such a degree as to constitute a compensable taking, the [Supreme] Court . . . identified three factors as having particular significance: 1) the economic impact of the regulation on the claimant; 2) the extent to which the regulation has interfered with distinct investment-backed expectations; and 3) the character of the governmental action." *Chang v. United States*, 859 F.2d 893, 895 (Fed. Cir.. 1988) (internal quotations omitted); *citing Connolly v. Pension Benefit Guaranty Corp.*, 106 S. Ct. 1018, 1027 (1986). "[T]he fact that legislation disregards or destroys existing contractual rights does not always transform the regulation into an illegal taking." *Connolly*, 106 S. Ct. at 1026.

In *Chang*, the plaintiffs had been working as petroleum engineers in Libya under private, written employment contracts entered into in 1985 with Sirte Oil Company, a Libyan corporation. 859 F.2d 893 (Fed. Cir. 1988). In 1986, after the executive orders and LSR, plaintiffs returned to the United States and sued the government alleging that the termination and irretrievable loss of their employment contracts with Sirte, a practical result of the Libyan sanctions, was a taking under the Fifth Amendment. *Id.* The *Chang* court found that the government "did not appropriate to the public use, *i.e.*, 'take' either plaintiffs' employment contracts or the plaintiffs' services." *Id.* at 896. The court also stated that, "to the extent [that] the Libyan Sanction Regulations are alleged to have interfered with distinct investment-backed expectations of the plaintiffs, we note that legislation readjusting rights and burdens is not

unlawful solely because it upsets otherwise settled expectations. . . . The Constitution explicitly grants to Congress the power to regulate commerce with the foreign nations. . . . [T]he plain language chosen by Congress in the IEEPA delegated to the President sweeping and unqualified powers to nullify, void, prevent or prohibit any right, power or privilege in any property in which any foreign country or a national thereof has any interest. . . . As the Supreme Court set forth in *Knox v. Lee*, 79 U.S. (12 Wall.) 457, 551, 20 L. Ed. 287 (1870), a valid governmental exercise of its constitutional power to regulate commerce with foreign nations can have the consequential effect of altering the obligations of preexisting contracts without giving rise to a taking." *Chang*, 859 F.2d at 897; *citing Usery v. Turner Elkhorn Mining Co.*, 96 S. Ct. 2882, 2892 (1976); *see also Tran Qui Than v. Regan*, 658 F.2d 1296 (9th Cir. 1981), *cert. denied*, 495 U.S. 1069 (1982); *see also Miranda v. Secretary of the Treasury*, 766 F.2d 1 (1st Cir. 1985); *see also IPT Company v. United States*, 1994 WL 613371 (S.D.N.Y. 1994).[9] Finally, the *Chang* court noted that the

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9. In *Tran Qui Than v. Regan*, 658 F.2d 1296 (9th Cir. 1981), *cert. denied*, 495 U.S. 1069 (1982), the court found that the refusal of the Treasury Secretary to unblock certain funds blocked under OFAC regulations pertaining to Vietnam did not violate the due process clause of the Fifth Amendment. The court "recognize[d] that blocking involves a deprivation of the enjoyment of a property interest. The deprivation . . ., however, is not equivalent to vesting. Vesting occurs when title to assets is transferred to the government; blocking does not transfer title but rather prohibits temporarily, transactions involving those assets. [The court] also recognize[d] that an action intended by the government to be a temporary block on any transactions involving those assets may amount to an

(Cont'd)

plaintiffs had no legitimate expectation, given the foreign policy implications of the contracts, that their commercial interests were immune from the fallout of deteriorating relations between the United States and Libya. *Chang*, 859 F.2d at 897.

The constitutionality of OFAC's blocking orders has withstood due process challenges in case law. *See Miranda*, 766 F.2d at 5 ("the temporary freezing of foreign-owned assets in this country falls within the constitutional limits of the Fifth Amendment"). Paradissiotis, like the plaintiffs

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(Cont'd)

interminable denial of property to the individual who must await the often slow and labyrinthian course of international relations." *Tran Qui Than*, 658 F.2d at 1304. In *Miranda v. Secretary of the Treasury*, 766 F.2d 1 (1st Cir. 1985), the court found that the Secretary's denial of a license to unblock funds blocked under OFAC regulations pertaining to Cuba was not a violation of the due process clause. The court relied in part on the reasoning of *Tran Qui Than* and also noted that "the [OFAC] prohibition is rationally related to the objective of maintaining an economic embargo" on Cuba. *Miranda*, 766 F.2d at 5. In *IPT Company v. United States*, 1994 WL 613371 (S.D.N.Y. 1994), the court found that the blocking of assets of a corporation, specially designated a Yugoslav national, was not a taking under the Fifth Amendment. "It is long settled law that the Executive branch has broad power to determine foreign policy and its implementation. It is not for this Court to decide the appropriateness of those determinations. . . The temporary freezing of foreign-owned assets in this country falls within the constitutional limits of the Fifth Amendment and has been used repeatedly as a means of implementing policy. . . The court . . . further finds that defendants' action amounts to a temporary deprivation of property and as such defendants' are not required to grant predeprivation hearings before the enforcement of a temporary blocking order." *IPT Company*, 1994 WL 613371.

in *Chang*, has not suffered a taking of his "right to contract" in violation of the due process clause. The government did not "take" or appropriate Paradissiotis' property interests for public use, but rather "blocked" assets within United States jurisdiction. *See Chang*, 859 F.2d at 897. The blocking serves rational purposes related to national security, an economic embargo, and efforts to isolate the Government of Libya in response to its terroristic activities. *Cf. Miranda*, 766 F.2d at 5.

OFAC has not violated Paradissiotis' rights under the due process clause of the Fifth Amendment.

D. The Sixth Amendment Claim

OFAC requires a license for a United States person to receive compensation from a Libyan SDN for legal services provided.[10] 31 C.F.R. §§ 550.517(b) and 550.209.

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10. OFAC does not require a license for a United States person to provide the following uncompensated legal services to Libyan SDNs: "1) legal advice and counseling to the Government of Libya . . . on the requirements of and compliance with the laws of any jurisdiction within the United States . . .; 2) representation of the Government of Libya . . . when named as a defendant in or otherwise made a party to domestic U.S. legal, arbitration, or administrative proceedings; 3) initiation of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. Jurisdiction of the Government of Libya that were in existence prior to January 8, 1986; 4) representation of the Government of Libya . . . before any federal agency with respect to imposition, administration, or enforcement of U.S. sanctions against Libya; and 5) provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense." 31 C.F.R. § 550.217.

Paradissiotis argues that "OFAC's interpretative regulation . . . is overbroad in that OFAC effectively denies legal counsel to Plaintiff in contravention of the Sixth Amendment to the Constitution of the United States." (Docket Entry No. 33, p. 42).

Paradissiotis relies on *American Airways Charters, Inc. v. Regan*, 746 F.2d 865 (D.C.Cir. 1984). In *American Airways*, the plaintiff, a Florida corporation, specially designated a Cuban national, who sought to "retain counsel without obtaining in advance a government (Treasury Department, Office of Foreign Assets Control) license to do so." 746 F.2d at 866. OFAC had prohibited a United States attorney from "form[ing] an attorney-client relationship" with the corporation without a license and had "prohibited [the plaintiff corporation's president and chief executive officer] from engaging in any transactions for, on behalf of, or with [the plaintiff], without a specific license from [OFAC]." *Id.* at 868. In reviewing the case, the court limited its inquiry to one question: whether the "bare formation of an attorney-client relationship" was outside the reach of OFAC. *Id.* at 871-72. The court "h[e]ld that although government permission, in the form of an Office of Foreign Assets Control license, is required prior to the execution of any transaction reaching the assets of a designated Cuban national, the Office of Foreign Assets Control lacks authority to condition the bare formation of an attorney-client relationship on advance of government approval." *Id.* at 866-67. The court explained that its holding would not defeat the purpose of the Cuban sanctions. "If [the plaintiff] is allowed to retain — although not to pay — counsel without government license, Cuba will not thereby

receive economic benefit from transactions with persons subject to the jurisdiction of the United States; the goal of limiting the flow of currency to Cuba will remain unimpaired; and Cuba will not gain any outlet for its goods in the United States market." *Id.* at 872.

In this case, the issue is not the "bare formation of an attorney-client relationship" but the compensated representation of an SDN by a United States attorney. *Compare id.* at 871-72. In *American Airways*, the court "caution[ed] that nothing in [its] disposition is properly read as authorizing payment to counsel without the approval of OFAC[; that] . . . no fee can be paid counsel absent a separate, and express, authorization from OFAC" and generally, that legislation "gives OFAC authority to control, in almost every respect, [the corporation's] commercial relations with the outside world." *Id.* at 875, 874, 872. *American Airways* does not support Paradissiotis' argument in this case.

It is undisputed that OFAC granted Paradissiotis' counsel a license to represent Paradissiotis and to receive payment for that representation. (Docket Entry No. 23, Tab A, pp. 68A-68C). OFAC has not caused Paradissiotis injury under the Sixth Amendment. *See Lujan v. Defenders of Wildlife*, 112 S. Ct. 2130, 2136 (1992). Paradissiotis argues vaguely that he is threatened with injury because: "[w]hen OFAC identified Plaintiff as a SDN, OFAC then had the mechanism to threaten criminal prosecution pursuant to the penalties of the LSR if any U.S. legal counsel offered legal advice to Mr. Paradissiotis that would facilitate business transactions of the [Government of Libya]." (Docket Entry

No. 33, p. 42). There is no evidence that Paradissiotis faces imminent prosecution. *See Farrakhan v. Reagan*, 669 F. Supp. 506 (D.D.C. 1987) (the court found that a plaintiff who had traveled to Libya despite the Libyan sanctions and who had received, prior to his trip, a letter from the Attorney General stating that plaintiff "should be prosecuted" for the trip, had "not shown that the threat of prosecution was genuine"), *aff'd*, 851 F.2d 1500 (D.C.Cir. 1988) (table disposition). "Abstract injury is not enough. The plaintiff must show that he has sustained or is immediately in danger of sustaining some direct injury as the result of the challenged official conduct and the injury or threat of injury must be both real and immediate, not conjectural or hypothetical." *City of Los Angeles v. Lyons*, 103 S. Ct. 1660, 1665 (1983). In addition, the "Sixth Amendment right to counsel . . . does not attach until the initiation of an adversary judicial process in respect to a specific crime." *Arrington v. County of Dallas*, 970 F.2d 1441, 1445 (5th Cir. 1992) (the court found that the plaintiff's "rights under the Sixth Amendment were not implicated" because no judicial "proceeding had [] been commenced"); *citing McNeil v. Wisconsin*, 111 S. Ct. 2204 (1991).

OFAC has not denied Paradissiotis his Sixth Amendment right to counsel.

V. The Application for a Preliminary Injunction

Paradissiotis has not met the first requirement necessary for the injunctive relief that he seeks: a showing that he has a substantial likelihood of prevailing on the merits. *See Enterprise International*, 762 F.2d at 472. This court therefore denies the application for a preliminary injunction.

Appendix C

VI. The Motion for Discovery

Paradissiotis has moved "this court to allow him to conduct discovery to more fully develop the record" to respond to OFAC's motion for summary judgment.[11] (Docket Entry No. 32).

Generally, "[t]he focal point for judicial review of an administrative agency's action should be the administrative record. *Camp v. Pitts*, 93 S. Ct. 1241, 1244 (1973). The role of the court is not to conduct its own investigation and substitute its own judgment for the administrative agency's decision. . . . Rather, the task of the reviewing court is to apply the appropriate . . . standard of review . . . to the agency decision based on the record the agency presents to

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11. During a telephone conference held March 4, 1997, Paradissiotis' counsel stated that Paradissiotis did not need to conduct the requested discovery to enable this court to determine whether Paradissiotis has a substantial likelihood of prevailing on the merits and whether he is entitled to preliminary relief. (Docket Entry No. 42).

Paradissiotis asserts the need to conduct discovery regarding his argument that OFAC did not apply the same standards to other similarly situated individuals. (Docket Entry No. 32). Paradissiotis does not assert an equal protection argument but rather that OFAC's selective enforcement evidences the arbitrary nature of OFAC's decisionmaking. Assuming, without deciding, that OFAC may not have applied the LSRs identically to other individuals, the case-by-case nature of the determination, the undisputed legal and factual basis for OFAC's application of the LSRs to Paradissiotis, and the deferential standard of review preclude this argument as a basis for either discovery or success on the merits.

the reviewing court. . . . If the record before the agency does not support the agency action, if the agency has not considered all relevant factors, or if the reviewing court simply cannot evaluate the challenged agency action on the basis of the record before it, the proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation. . . . Thus while certain circumstances may justify going beyond the administrative record, a court conducting a judicial review is not generally empowered to do so." *Preserve Endangered Areas of Cobb's History Inc. v. United States Army Corps of Engineers*, 87 F.3d 1242, 1246 (11th Cir. 1996); *see also USA Group Loan Services v. Riley*, 82 F.3d 708, 715 (7th Cir. 1996) (the court found that the plaintiffs were not entitled to conduct additional discovery concerning their allegations that the Department of Education negotiated in bad faith); *see also National Nutritional Foods Association v. Food and Drug Administration*, 491 F.2d 1141, (2d. Cir. 1974) ("it is not the function of this court to probe the mental processes of the [agency administrator;] . . . strong preliminary showings of bad faith have been required . . . before the taking of testimony has been permitted with regard to internal agency deliberations").

"Supplementation of an administrative record is only allowed in the following circumstances: 1) the record is so inadequate to explain the agency action that it effectively frustrates judicial review; 2) the record is incomplete in that it does not contain documents considered by the decisionmaker; 3) the agency has failed to consider relevant factors; or 4) there is a strong showing that the agency engaged in improper behavior or acted in bad faith." *United*

States v. Amtreco Inc., 806 F. Supp. 1004, 1006 (M.D. Ga. 1992); *citing Animal Defense Council v. Hodel*, 840 F.2d 1432 (9th Cir. 1988), *corrected*, 867 F.2d 1244 (9th Cir. 1989); *see also Moretti v. Hoffman*, 526 F.2d 1311 (5th Cir. 1976) (the court upheld the denial of discovery by a plaintiff who asserted that the administrative processing of his permit was a "sham," that documents favorable to his case were "omitted," that he "received unequal treatment with other applicants," that the administrative application denial was "founded on a punitive motivation," and that there was "no substantial evidence to support the decision"); *see also Avoyelles Sportsmen's League Inc. v. Marsh*, 715 F.2d 897, 905 (5th Cir. 1983); *cf. Center for Marine Conservation v. Brown*, 917 F. Supp. 1128, 1144 n.10 (S.D. Tex. 1996).

Paradissiotis has not made a "strong showing" of bad faith on the part of OFAC. Specifically, he has not identified relevant factors that OFAC failed to consider in its denial of his license applications or shown that the record is inadequate to explain OFAC's actions. *See Moretti*, 526 F.2d at 1312; *see also Animal Defense Council*, 840 F.2d at 1437; *see also National Nutritional Foods*, 491 F.2d at 1145. Nor has Paradissiotis specified the discovery he seeks "to more fully develop the record." (Docket Entry No. 32). This court has found that in designating Paradissiotis an SDN of Libya and denying his license requests, OFAC acted within its authority, adequately considered the relevant factors, and provided a reasoned basis for its decision. *Overton Park*, 91 S. Ct. at 823-25.

Paradissiotis' motion to allow discovery is DENIED.

Appendix C

VII. Conclusion

This court DENIES Paradissiotis' motion to conduct discovery; GRANTS defendants' motion for summary judgment; and DENIES Paradissiotis' application for a preliminary injunction.

SIGNED on March 17, 1997.

s/ Lee H. Rosenthal
Lee H. Rosenthal
United States District Judge

APPENDIX D — PRESIDENTIAL EXECUTIVE ORDER 12543 DATED JANUARY 7, 1986

Executive Order 12543

Prohibiting Trade and Certain Transactions Involving Libya

January 7, 1986

By the authority vested in me as President by the Constitution and laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), the National Emergency Act (50 U.S.C. 1601 et seq.), sections 504 and 505 of the International Security and Development Cooperation Act of 1985 (Public Law 99-83), section 1114 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1514), and section 301 of title 3 of the United States Code,

I, RONALD REAGAN, President of the United States of America, find that the policies and actions of the Government of Libya constitute an unusual and extraordinary threat to the hereby declare a national emergency to deal with that threat.

I hereby order:

Section 1. The following are prohibited, except to the extent provided in regulations which may hereafter be issued pursuant to this Order:

(a) The import into the United States of any goods or services of

Libyan origin, other than publications and materials imported for news publications or news broadcast dissemination;

(b) The export to Libya of any goods, technology (including technical data or other information) or services from the United States, except publications and donations of articles intended to relieve human suffering, such as food, clothing, medicine and medical supplies intended strictly for medical purposes;

(c) Any transaction by a United States person relating to transportation to or from Libya; the provision of transportation to or from the United States by any Libyan person or any vessel or aircraft of Libyan registration; or the sale in the United States by any person holding authority under the Federal Aviation Act of any transportation by air which includes any stop in Libya;

(d) The purchase by any United States person of goods for export from Libya to any country;

(e) The performance by any United States person of any contract

in support of an industrial or other commercial or governmental project in Libya;

(f) The grant or extension of credits or loans by any United States person to the Government of Libya, its instrumentalities and controlled entities;

(g) Any transaction by a United States person relating to travel by any United States citizen or permanent resident alien to Libya, or to activities by any such persn within Libya, after the date of this Order, other than transactions necessary to effect such person's departure from Libya, to perform acts permitted until February 1, 1986, by Section 3 of this Order, or travel for journalistic activity by persons regularly employed in such capacity by a newsgathering organization; and

(h) Any transaction by any United States person which evades or avoids, or has the purpose of evading or avoiding, any of the prohibitions set forth in this Order.

For purposes of this Order, the term "United States person" means any United States citizen, permanent resident

alien, juridical person organized under the laws of the United States or any person in the United States.

Sec. 2. In light of the prohibition in Section 1(a) of this Order, section 251 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1881), and section 126 of the Trade Act of 1974, as amended (19 U.S.C. 2136) will have no effect with respect to Libya.

Sec. 3. This Order is effective immediately, except that the Prohibitions set forth in Section 1(a), (b), (c), (d) and (e) shall apply as of 12:01 a.m. Eastern Standard Time, February 1, 1986.

Sec. 4. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of this Order. Such actions may include prohibiting or regulating payments or transfers of any property or any transactions involving the transfer of anything of economic value by any United States person to the Government of Libya, its instrumentalities and controlled entities, or to any Libyan national or entity owned or controlled, directly or indirectly, by Libya or Libyan nationals. The Secretary may redelegate any of these functions to other officers and agencies of the Federal government. All agencies of the United States government are directed to

take all appropriate measures within their authority to carry out the provisions of this Order, including the suspension or termination of licenses or other authorizations in effect as of the date of this Order.

This Order shall be transmitted to the Congress and published in the Federal Register.

RONALD REAGAN
THE WHITE HOUSE,
January 7, 1986.

APPENDIX E — PRESIDENTIAL EXECUTIVE ORDER 12544 DATED JANUARY 8, 1986

Executive Order 12544

Blocking Libyan Government Property in the United States or Held by U.S. Persons

January 8, 1986

By the authority vested in me as President by the Constitution and laws of the United States, including the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), the National Emergencies Act (50 U.S.C. 1601 et seq.) and section 301 of title 3 of the United States Code, in order to take steps with respect to Libya additional to those set forth in Executive Order No. 12543 of January 7, 1986, to deal with the threat to the national security and foreign policy of the United States referred to in that Order,

I, RONALD REAGAN, President of the United States, hereby order blocked all property and interests in property of the Government of Libya, its agencies, instrumentalities and controlled entities and the Central Bank of Libya that are in the United States, that hereafter come within the United States or that are or hereafter come within the possession or control of U.S. persons, including overseas branches of U.S. persons.

The Secretary of the Treasury, in consultation with the Secretary of State, is authorized to employ all powers granted to me by the International Emergency Economics Power Act, 50 U.S.C. 1701 et seq., to carry out the provisions of this Order.

Appendix E

This Order is effective immediately and shall be transmitted to the Congress and published in the Federal Register.

RONALD REAGAN
THE WHITE HOUSE,
January 8, 1986.

APPENDIX F — RELEVANT REGULATIONS

31 C.F.R. § 550.202

§ 550.202 Prohibited exports of goods, technology or services to Libya.

Except as authorized, no goods, technology (including technical data or other information) or services may be exported to Libya from the United States, except publications and donated articles intended to relieve human suffering, such as food, clothing, medicine and medical supplies intended strictly for medical purposes.

* * *

31 C.F.R. § 550.205

§ 550.205 Prohibited engagement in contracts.

Except as authorized, no U.S. person may perform any contract in support of an industrial or other commercial or governmental project in Libya.

* * *

31 C.F.R. § 550.209

§ 550.209 Prohibited transactions involving property in which the Government of Libya has an interest; transactions with respect to securities.

(a) Except as authorized by regulations, rulings, instructions, licenses, or otherwise, no property or interests

in property of the Government of Libya that are in the United States that hereafter come within the United States or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches, may be transferred, paid, exported, withdrawn or otherwise dealt in.

(b) Unless authorized by a license expressly referring to this section, the acquisition, transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of, or the endorsement or guaranty of signatures on or otherwise dealing in any security (or evidence thereof) registered or inscribed in the name of the Government of Libya is prohibited irrespective of the fact that at any time (either prior to, on, or subsequent to 4:10 p.m. e.s.t., January 8, 1986) the registered or inscribed owner thereof may have, or appears to have, assigned, transferred or otherwise disposed of any such security.

* * *

31 C.F.R. § 550.304

§ 550.304 Government of Libya.

The term *Government of Libya* includes:

(a) The state and the Government of Libya, as well as any political subdivision, agency, or instrumentality thereof, including the Central Bank of Libya;

(b) Any partnership, association, corporation, or other organization owned or controlled directly or indirectly by the foregoing;

(c) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the effective date, acting or purporting to act directly or indirectly on behalf of any of the foregoing;

(d) Any other person or organization determined by the Secretary of the Treasury to be included within this section.

* * *

31 C.F.R. § 550.305

§ 550.305 Libyan person.

The term *Libyan person* means any Libyan citizen, any juridical person organized under the laws of Libya, or any juridical person owned or controlled, directly or indirectly, by a Libyan citizen or the Government of Libya.

* * *

31 C.F.R. § 550.308

§ 550.308 United States person.

The term *United States person* or, as abbreviated, *U.S. person,* means any United States citizen, permanent resident

alien, juridical person organized under the laws of the United States, or any person in the United States.

* * *

31 C.F.R. § 550.316

§ 550.316 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property in which the Government of Libya has an interest, with respect to which payments, transfers or withdrawals or other dealings may not be made or effected except pursuant to an authorization or license authorizing such action.

* * *

31 C.F.R. § 550.422

§ 550.422 Exportation of services; performance of service contracts; legal services.

(a) The prohibition on the exportation of services contained in § 550.202 applies to services performed:

(1) In the United States;

(2) By an entity located in the United States, including its overseas branches; or

(3) Outside the United States by an individual U.S. person ordinarily resident in the United States; on behalf

of the Government of Libya, or where the benefit of such services is otherwise received in Libya. The benefit of services performed anywhere in the world on behalf of the Government of Libya, including services performed for a controlled entity or specially designated national of the Government of Libya, is presumed to be received in Libya.

(b) The prohibitions contained in §§ 550.205 and 550.209 apply to services performed by U.S. persons, wherever located:

(1) On behalf of the Government of Libya;

(2) With respect to property interests of the Government of Libya; or

(3) In support of an industrial or other commercial or governmental project in Libya.

(c) *Example:* U.S. persons may not, without specific authorization from the Office of Foreign Assets Control, represent an individual or entity with respect to contract negotiations, contract performance, commercial arbitration, or other business dealings with the Government of Libya. See § 550.517 on licensing policy with regard to the provision of certain legal services.

* * *

Appendix F

31 C.F.R. § 550.501

§ 550.501 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Secretary of the Treasury pursuant to section 203 of the International Emergency Economic Powers Act, shall be deemed to authorize or validate any transaction effected prior to the issuance of the license, unless such license or other authorization specifically so provides.

(b) No regulation, ruling, instruction, or license authorizes a transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Treasury Department and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transactions prohibited by any provision of parts 500, 505, 515, 520, 535, 540, or 545 of this chapter unless the regulation, ruling, instruction or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing a transaction otherwise prohibited under this part has the effect of removing a prohibition or prohibitions in subpart B from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

* * *

Appendix F

31 C.F.R. § 550.517

§ 550.517 Exportation of certain legal services to the Government of, or persons in, Libya.

(a) The provision to the Government of Libya, or to a person in Libya, of the legal services set forth in paragraph (b) of this section is authorized, provided that all receipt of payment therefor must be specifically licensed. The provision of any other legal services as interpreted in § 550.422 requires the issuance of a specific license.

(b) Specific licenses are issued, on a case-by-case basis, authorizing receipt, from unblocked sources, of payment of professional fees and reimbursement of incurred expenses for the following legal services by U.S. persons to the Government of Libya or to a person in Libya:

(1) Provision of legal advice and counselling to the Government of Libya or to a person in Libya on the requirements of and compliance with the laws of any jurisdiction within the United States, provided that such advice and counselling is not provided to facilitate transactions in violation of subpart B of this part;

(2) Representation of the Government of Libya or of a person in Libya when named as a defendant in or otherwise made a party to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests

subject to U.S. jurisdiction of the Government of Libya that were in existence prior to January 8, 1986, or of a person in Libya;

(4) Representation of the Government of Libya or a person in Libya before any federal agency with respect to the imposition, administration, or enforcement of U.S. sanctions against Libya; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(c) Enforcement of any lien, judgment, arbitral award, decree or other order through execution, garnishment or other judicial process purporting to transfer or otherwise alter or affect a property interest of the Government of Libya is prohibited unless specifically licensed in accordance with § 550.210(e).

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